

Exhibit A

1 Ben Higgins: Okay, good afternoon. Let the record reflect that today is
2 February 2nd, 2018. Happy Groundhog Day. The time is 2:30 P.M. This is the
3 meeting of creditors in the chapter 11 case of the [INDISCERNIBLE 00:00:18]
4 Level Solar Incorporated, case number 1713469NKV. My name is Ben Higgins.
5 I'm an attorney in the Office of the United States Trusty. That's a
6 compartment of the Department of Justice. And I will be the presiding
7 officer at this meeting. Pursuant to the bankruptcy code, the United States
8 trustee supervises the administration of bankruptcy cases. The debtor is
9 required to appear to be examined under oath regarding the bankruptcy case.
10 The examination will be recorded, is being recorded, so, if you are
11 questioning the debtor, I ask that you come up at that time and sit next to
12 the recorder, and anyone questioning the debtor should state their names and
13 indicate who they represent. At this time I would like to swear in the
14 debtor's representatives. So, Mr. Pell, could you please raise your right
15 hand? Do you swear or affirm to tell the truth, the whole truth, and nothing
16 but the truth?

17 Richard Pell: I do.

18 Ben Higgins: Okay, thank you. Would you please state and spell your name?

19 Richard Pell: Richard Pell. It's R-I-C-H-A-R-D, middle initial C, last name
20 Pell, P-E-L-L.

21 Ben Higgins: And what is your relationship to the debtor?

22 Richard Pell: Well, basically I was an investor in the company. My wife and
23 I both provided equity capital to the company, also revolving credit and
24 other debt in the form of convertible notes.

25 Ben Higgins: Okay. Do you have any—go ahead.

1 Michael Conway: Currently he's director and secretary.

2 Ben Higgins: That was my question. Director and secretary. Any other
3 titles that you currently hold with the debtor?

4 Richard Pell: No.

5 Ben Higgins: Okay. And are you personally familiar with the financial
6 affairs of the debtor?

7 Richard Pell: Yes.

8 Ben Higgins: Okay. And will counsel please identify yourself for the
9 record?

10 Michael Conway: Michael Conway, Shipman & Goodwin representing the debtor.

11 Ben Higgins: Thank you. Mr. Pell, I'm going to assume that you understand
12 the questions that I ask, unless you tell me that you don't understand them.

13 Is that okay? Is there anything that would prevent you from thinking clearly
14 or testifying truthfully today?

15 Richard Pell: No.

16 Ben Higgins: Okay. I'm going to turn your attention to the documents. You
17 probably have a copy. Okay. So, first, can you take a look at the
18 bankruptcy petition in front of you? Is that your signature on page 4?

19 Richard Pell: Yes, it is.

20 Ben Higgins: Okay. And are you personally familiar with the information
21 contained in the bankruptcy petition?

22 Richard Pell: Yes.

23 Ben Higgins: Okay. And what's in front of you appears to be a true and
24 accurate copy of the petition that was filed in this case?

25 Richard Pell: Correct, yes.

1 Ben Higgins: Okay. Would you take a look at the schedules? Does that
2 appear to be a true and accurate copy of the schedules that have been filed
3 in this case?

4 Richard Pell: Yes.

5 Ben Higgins: Could you turn to the last page? This is at—for the record,
6 this is ECF docket number 35, page 46 of 46. Is that your signature?

7 Richard Pell: Yes, it is.

8 Ben Higgins: Okay. And are you personally familiar with the information
9 contained in the schedules?

10 Richard Pell: Yes.

11 Ben Higgins: Okay. And I'm going to ask you to take a look at the statement
12 of financial affairs. It's ECF docket number 36.

13 Richard Pell: Just a second.

14 Ben Higgins: I think there's a copy of it here too if you can't find it
15 there.

16 Richard Pell: I didn't see it there.

17 Ben Higgins: It's I believe this after the first page here.

18 Richard Pell: It's a list of creditors.

19 Ben Higgins: Okay. Can you turn to page 18, the last page, ECF page number
20 19 of 19? Is that your signature on that page?

21 Richard Pell: Yes, it is.

22 Ben Higgins: And are you personally familiar with the information contained
23 in this statement?

24 Richard Pell: Yes.

1 Ben Higgins: Okay. With respect to all three of the documents we just
2 discussed, did you review these documents before they were filed?

3 Richard Pell: Yes.

4 Ben Higgins: And is the information contained in these documents true,
5 correct, and complete to the best of your knowledge?

6 Richard Pell: To the best of my knowledge.

7 Ben Higgins: Okay. Are there any changes that you would wish to make to any
8 of the documents at this time?

9 Richard Pell: Did you make that one change to my wife's—?

10 Michael Conway: No, there might be change to one of the creditors but
11 nothing to the substantial portions of the document.

12 Ben Higgins: Okay. Has the debtor

13 [00:05:00]

14 ever filed for bankruptcy before?

15 Richard Pell: No.

16 Ben Higgins: Okay. And has the debtor opened post-petition bank accounts?

17 Richard Pell: The debtor is in the process of opening a new debit account.

18 As you know, the account's with Citibank, and Citibank is asking them to find
19 a new bank. They've stopped opening debit accounts, and it's caused a little
20 bit of delay. This process started this week.

21 Ben Higgins: Sure. These first few questions up front here, they deal with
22 the U.S. trustee requirements and certain things that the debtor needs to
23 comply with in order to be in bankruptcy. One is to close your previous bank
24 accounts and open what's called debtor and possession bank account, which
25 Mike was just referring to. For purposes of these requirements, to the

1 extent there are things outstanding, such as the debtor possession account is
2 not being opened, what we'll do is, when this meeting is over, we won't
3 formally close it, we'll continue it to another date. That doesn't
4 necessarily mean you have to come back, but it just means the meeting is not
5 closed until those requirements have all been met, so I'll provide a list of
6 those things to your counsel. One of those things will be opening a debtor
7 in possession bank account. If Citibank doesn't have it, your counsel should
8 have a list of authorized depositories that do provide debtor in possession
9 accounts. And, with respect to that, I just wanted to point you to—I had it
10 here. So one of the things we require, the United States Trusty Program
11 requires is a declaration that accounts have been closed and new accounts
12 have been opened. You have one signed here, but the information isn't
13 complete, because, well, it hasn't actually happened yet, so we'll need one
14 of these done when the information is actually complete.

15 Richard Pell: Okay.

16 Michael Conway: And Ms. [PH 00:06:44] Maronia asked me to sign it upfront.

17 Ben Higgins: Okay, right.

18 Michael Conway: That's why you have it.

19 Richard Pell: Oh, that's the gal I talked to on the phone. She's very
20 thorough.

21 Ben Higgins: She is. She is. She does a good job. And, as far as the bank
22 accounts, everything has been closed except for that one Citibank checking
23 account, is that correct?

24 Richard Pell: That's true.

1 Ben Higgins: Okay. My next couple questions are about insurance policies.

2 I know you've provided some information to my office. Can you tell me about

3 the insurance that the debtor currently has in place at this point? From

4 what I understand, from what you submitted to the office, it appears that

5 there's only two policies currently active. There's a commercial auto policy

6 and a business management indemnification policy. Is that accurate?

7 Richard Pell: By the latter, are you referring to directors and officers

8 liability?

9 Ben Higgins: Yes.

10 Richard Pell: Yes, that's correct.

11 Ben Higgins: As far as the commercial auto policy, your schedules show that

12 there's seven vehicles that the debtor owns. Are all seven vehicles covered

13 by that one auto policy?

14 Richard Pell: I'm going to defer actually to Mike or Bill Frey back there,

15 because they've been handling the sort of people picking up the rented

16 vehicles, the leased.

17 Michael Conway: Yeah, the policy covers those remaining vehicles, and we're

18 in the process of getting permission to sell those vehicles. Hopefully we'll

19 have everything sold before the policy expires in March.

20 Ben Higgins: Okay.

21 Michael Conway: If not we'll have to extend it, but—

22 Ben Higgins: Currently the debtor doesn't have any type of general liability

23 insurance, is that correct?

24 Richard Pell: That policy expired in December.

1 Ben Higgins: Okay. And, as far as—early in this case, as you're probably
2 aware, your counsel filed a motion with respect to certain insurance
3 policies, and attached to that motion there were a list of insurance policies
4 that the debtor previously had in place. Among them were general liability
5 with Colony, excess liability policy with Colony, ERISA 401K bond with
6 Traveler's, a Putnam County license bond with Traveler's, and a New York home
7 improvement bond. As far as I understand it, all those that I just listed
8 have either expired or are no longer active. Is that your understanding as
9 well?

10 Richard Pell: Yeah, I mean, some of them became unnecessary when we went out
11 of the residential construction and installation business in a hurry.

12 Ben Higgins: Okay. I'm going to ask you in a couple minutes about the
13 change in the business model, what's happened. But, as far as—is there any
14 insurance that's customary to a business in your industry at this point that
15 you don't have in place that you need to get in place?

16 Richard Pell: Well, I mean, the most critical one was the worker's comp
17 insurance policy. That's really the proximate cause of us letting go our
18 entire staff, because we were told by the New York State Worker's Comp
19 Insurance Board that we needed to give them over \$700,000 that we didn't
20 have, and the investors who had financed the company up until that point just
21 decided we can't have uninsured workers, or we're committing a class E
22 felony, so we pretty quickly decided to just shut the doors.

23 [00:10:00]

24 Ben Higgins: Right. And how many employees do you have currently?

25 Richard Pell: Let's see, we've got two, I believe.

1 Michael Conway: Two part time, hourly-based employees.

2 Ben Higgins: And what functions do they serve at this point?

3 Richard Pell: Well, basically were trying to recreate the financial records
4 of the company, because financial books and records deteriorated markedly in
5 2017. You know, another sort of milestone on the way was our inability to
6 get a 2016 audit completed, and we belatedly discovered that the CEO hadn't
7 even started the process, although he told us somewhere in May that he had
8 commenced that process, but I think there was a little concern about an audit
9 and what an audit might uncover, so they're primarily muckraking. Eventually
10 we're going to hire forensic accountants to find out where all the outgoing
11 money went, but that's the next step in the process. We haven't gotten there
12 yet.

13 Ben Higgins: Are they handling any new solar installation type business,
14 any—?

15 Richard Pell: No.

16 Michael Conway: And just to add to what Mr. Pell said, they are contract
17 employees, they are—

18 Ben Higgins: I'm just going to move this over, just because you're a soft
19 talker, Mike.

20 Michael Conway: They're contract employees who—one of whom was digging in
21 the financials. The other one is ore a systems analyst who's trying to
22 figure out what the assets of the company are, you know, and what's out there
23 that's been installed based on the record. So one's dealing with the
24 financial aspect of it, the other's dealing with the asset side of it. Both
25 of them should be finished with their roles soon, and then we can move to, in

1 order of course, forensic accountant, and then our tax accountant we've
2 spoken with can't start until the forensic accounting's been done. They've
3 looked at the books and records, but there's not enough information here to
4 do tax returns for 2016 and 2017 without forensic accounting.

5 Ben Higgins: And that's your understanding as well, Mr. Pell?

6 Richard Pell: Correct.

7 Ben Higgins: Okay. And has the debtor established post-petition books and
8 records? I mean, post-bankruptcy petition books and records?

9 Richard Pell: It's a work in progress.

10 Michael Conway: Yes.

11 Ben Higgins: Yes or it's a work in progress?

12 Richard Pell: Yeah, books and records are being established by the
13 bookkeeper, and it was complete enough for us to file our schedules.

14 Ben Higgins: Okay. And where are the books and records located?

15 Michael Conway: The company uses a software called NetSuite, so it's really
16 in the cloud, but the bookkeeper is located—sits in New Jersey at home.

17 Ben Higgins: The accountant works from home? That's one of the two
18 employees or—?

19 Richard Pell: Yeah, so the records are on the cloud, and it's a virtual—
20 either it's a financial investigation or tech work supplied by the other guy.

21 Ben Higgins: Okay. One of the other things that you're required to submit
22 to us is your latest tax returns. I believe we have 2014 and 2015. From
23 what I understand, 2016 has not been filed yet. Is that correct? And that's
24 due to—
25

1 Richard Pell: That's correct, due to poor financial books and records being
2 kept by our predecessors.

3 Ben Higgins: Okay. Could you tell me a little bit more generally about the
4 background and the nature of the debtor and the debtor's business?

5 Richard Pell: Yeah. Okay, basically it's a residential construction company
6 on the one hand, but the second aspect of residential solar installation is
7 the financial engineering challenge. I first got involved with the company
8 in 2015. Prior to that, the former CEO Richard Kaiser was running the
9 business for a family office out of Salt Lake City, Utah. My understanding
10 is they invested about 5 million in the business, couldn't make it work. At
11 the end of the day, Bill Frey ended up buying it for a couple of hundred
12 thousand as they were unable to make payroll in the very near future. The
13 reason Bill was willing to buy it is his wife Carrie had run into Richard
14 Kaiser at an MIT event. He started talking about the business a little bit,
15 and Carrie, who's a very bright woman, and she said it sounds like you've got
16 a financial engineering problem, because this business qualifies for federal
17 investment tax credits, but you don't know how to get them. And the problem
18 with a solar business organized around power purchase agreements, like ours
19 was, is the good news, the revenues come in a stream over 20 years.

20 [00:15:00]

21 The bad news is your costs are up front. So it becomes a real challenge to
22 finance yourself. So I originally invested because I saw two good things,
23 Richard Kaiser, who I was very impressed with, seemed quite an expert in the
24 solar industry, and Bill Frey I know as he's an award-winning financial
25 engineer. And, as we started looking at the models for the business, if you

1 could put together efficient, the construction side of it, another component
2 is the sales side, that's got to work, a key component is financial
3 engineering, and I think Bill really put together an industry state-of-the-
4 art financial model using tax equity providers as well as working capital
5 facility from the New York Green Bank. They were consistently very helpful,
6 and New York State is very committed to clean energy and helping to make that
7 happen. It was good business for us. It was good business for them. And
8 then final component is management. Business was growing and started in
9 Suffolk County and Long Island and then into Nassau County. Major move was
10 to expand into New York City because of local incentives. Actually the
11 prices we would receive for power sold were very attractive relative to Long
12 Island, although there are some added challenges of doing business in New
13 York. It was a business that chewed up money. But, in our minds, the model
14 was create profitable locations, Suffolk County, Nassau County, Brooklyn,
15 Queens, Staten Island, use the profits from those operations plus additional
16 capital sparingly if necessary to further geographically expand the
17 footprint of the company. We also did that into the state of Massachusetts.
18 One of the problems was we did a number of financings, and increasingly we
19 started to lose confidence in the CEO. I think Bill Frey was actually the
20 first person to figure out there was a problem when he was lied to back in
21 late 2016 about money he had lent the company and expected to get repaid in a
22 couple days, and Kaiser said at the Cornell Club I think it was, oh, you're
23 not getting paid back. And Bill went ballistic. Now, at that point, I was
24 still sort of drinking the Kaiser Kool-Aid, so I was rushing back and forth
25 from one room to another trying to calm Bill down and calm Kaiser down, and

1 so things continued. We did another round of financing in March 2017 where I
2 think my wife was the main supplier of capital. Post that financing though,
3 it became clear that the numbers we had been presented with to raise the
4 money were inaccurate and greatly understated the actual costs of the
5 operation. So the two key components in a profitable solar business is what
6 do you get paid for the power you sell, the power produced by the panels, and
7 what does it cost you to get all those panels up on the roof, plus your SG&A
8 costs and headquarter costs. So we felt we could be profitable somewhere
9 between two and three dollars in cost for putting the panels on the roof and
10 covering our headquarters' costs and so forth. And we were shown numbers
11 that showed we were right there or getting very close to there, with a little
12 additional growth we soon would be there, but then later discovered our costs
13 were probably in excess of \$5.00 and a lot of mistaken expenditures and
14 mismanagement was being hidden from us. So, in June of 2017, we actually
15 made the decision to terminate Richard Kaiser as CEO, although in our minds
16 it was probably a relationship we were going to continue for transitional
17 purposes. We informed him of that. Didn't take it particularly well, but we
18 all left the meeting. The following day he informed us that he was hiring
19 security guards if any of us, the owners of the company attempted to enter
20 the premises, they would be barred from doing so. Strange position for him
21 to take, but later we kind of understood why he did that. As we researched
22 all the past documentation, we realized that Richard believed he didn't have
23 to answer to anyone.

24 [00:20:00]

1 And that's because in one of the financing rounds, the corporate counsel, the
2 law firm Faber something and something had completely changed the investor
3 rights agreement, which basically made Kaiser in a position where he really
4 didn't seem to have to answer to anyone. Fortunately, we retained Shipman &
5 Goodwin, and through some research into Delaware corporate law, we determined
6 that his assessment was inaccurate and that the owners of the company still
7 did retain some rights. So we hired a couple of pretty beefy former
8 policemen from Newark, New Jersey to accompany us to the premises, and after
9 two hours Mr. Kaiser agreed to sign a resignation notice. He continued to
10 float around the company for a couple weeks, but we put in Kevin Johnson as
11 an interim CEO.

12 Ben Higgins: What was the timeframe of that?

13 Richard Pell: Almost immediately.

14 Ben Higgins: So June of 2017?

15 Richard Pell: Correct. And historically Richard Kaiser had always tried to
16 kind of keep investors at arm's length from the corporate headquarters.
17 Carrie Frey did assist him in some specialized tasks. We always felt
18 everything ran through him. He was in a position of seeming to want to
19 control everything, and, as the business grew in complexity, we felt, well,
20 you need a bit of a management team here. You need a Chief Operating
21 Officer. You could benefit from a Chief Financial Officer. You could
22 certainly benefit from a Head of Operations. You could benefit from a Head
23 of Sales. So Carrie spent a lot of time interviewing potential personnel,
24 but, for whatever reason, they all seemed to fall short of Richard's
25 standard, so the management team continued to be more or less him. The few

1 people he did hire seemed to us inferior candidates among the ones presented
2 to them, but they were less threatening to him personally. So basically we
3 went inside the company. It was our intention to transition it eventually to
4 a pure financing company, because, if we decomposed the elements of what we
5 were doing, I think sales, everything from sale of the system to turning on
6 the power as operations I'd call it and then the back end financing the whole
7 thing, we felt actually the greatest value in our company was state-of-the-
8 art financing. Actually to give Mr. Kaiser credit, I think the operating
9 part of the company that he built was very good, everything from the customer
10 agreeing to buy to turning on the power, we had very good array design
11 people, permitting people to work through the various municipality
12 requirements to get a permit. I think the construction was very efficient.
13 They re-engineered the design of the trucks delivering the panels. So I
14 think the operational aspects of the company were very good. The sales
15 system was very flawed. It was something I would describe as based on the
16 old Encyclopedia Britannica model. When I was a kid, they used to have these
17 people selling these sets of encyclopedias door to door. They've all kind of
18 been made redundant by Wikipedia and the Internet and so forth. So it was
19 actually a huge door knocking operation. I think at one point Richard Kaiser
20 calculated that we had knocked on a million doors. But it was a very
21 expensive sales operation. The other thing that happened was, as we moved
22 from Long Island into New York City, we had demanded, and Richard eventually
23 acquiesced to giving us monthly figures on what was sold, what was permitted,
24 what was installed. And we noticed as New York City started rising, Long
25 Island started collapsing, because he had had to move key personnel from Long

1 Island to get the New York City initiative up and rolling, and that basically
2 cannibalized our ability to sell and install new systems in Long Island. We
3 actually at one point were talking to a source of potential equity, a guy
4 very experienced in private equity, and he reassured us a little bit. He
5 said this is not that uncommon. Let me guess. You tried to expand
6 geographically and cannibalized your earlier operations. And he said I've
7 seen this movie over and over again. It's probably a fixable problem. But,
8 once

9 [00:25:00]

10 we realized that key financial information had been hidden from us, that we'd
11 been presented with faulty presentations, as we started to dig into the true
12 financial condition of the company, we realized we had a problem we had to
13 restructure. Initially, as I said, the plan was to slowly migrate from a
14 fully vertically-integrated company to something that was definitely more
15 tilted towards leveraging our financing expertise, possibly finding a way to
16 leverage our operational capabilities, which were good, but getting out of
17 the current sales model. And then we discovered that our workers' comp
18 insurance hadn't been paid, and that was really the proximate issue which
19 forced us to very quickly close the business. We just thought it's a Class E
20 felony to have workers on rooftops and all kinds of dangerous places without
21 insurance, and we weren't willing to put in more money into the company at
22 that point, nor were we willing to commit a Class E felony.

23 Ben Higgins: What was the timeframe that you discovered the workers' comp
24 insurance hadn't been paid?

25 Richard Pell: I believe it was August of 2017--was it September?

1 Michael Conway: Shortly after a worker fell off a roof in Massachusetts.

2 Ben Higgins: Okay. I'm going to go back into what you said a little bit and
3 ask just for my own edification, to make sure I understood some of that. You
4 talked about how you had previously a fully integrated model is how you
5 described it, so everything from sales to installing to the actual financing
6 piece of it. You handled every piece of that.

7 Richard Pell: Correct.

8 Ben Higgins: And, as far as the agreements with homeowners, would that have
9 been an agreement between the individual homeowner and the debtor itself?

10 Richard Pell: Correct. And just to back up, there are two kind of main ways
11 of doing this in the business. We use the PPA model, which is the homeowner
12 signs and agreement to purchase the power from panels we own on their roof
13 for 20 years. And the appeal to that for them is they have to put up no
14 money, and they save significant amounts off of their current electricity
15 bill. There's a second model which may become more prevalent in the industry
16 which is basically the homeowner buys the system. You sell it to them, you
17 get it installed, you help them with permitting, and the advantage for solar
18 companies is so many of them have not been able to figure out the financing,
19 and with the reduction in the U.S. corporate tax rate, the ability to get
20 that financing may become a lot more difficult. That's a whole separate
21 issue. So we may find the industry gravitates towards the pure sales model.

22 Ben Higgins: I see. So, with your model, the debtor continues to own the
23 actual physical array that gets put on the roof.

24 Richard Pell: Correct.

1 Ben Higgins: And the customer doesn't actually pay anything to have that
2 installed, is that correct?

3 Richard Pell: Correct, we would do it for free.

4 Ben Higgins: And the way you generate money is the array produces
5 electricity, you then sell that electricity back to the customer and into the
6 grid if there's excess electricity?

7 Richard Pell: Correct.

8 Ben Higgins: So are you getting a payment stream from the customer and from
9 the—is it the electric company?

10 Richard Pell: Yeah, in a perfect world, your homeowner is paying you for the
11 power at an agreed rate, and I think there's some escalator cause each year,
12 you know, something approximating the inflation rate. And then,
13 surprisingly, although you'd think we'd be a competitor, companies like Con
14 Ed or Long Island Power, they're willing to pay us for the energy. You know,
15 we'll wheel it to them over the grid. They'll pay us for the excess power
16 that the homeowner's not using, and the reason they're willing to do that is
17 getting our power, particularly at peak power periods, typically in the
18 middle of the day when the sun is shining, is when a lot of people is using
19 electricity, if they can get that power, it allows them to push out for a
20 number of years in the future their need to build the next multi-billion
21 dollar power plant, which they don't want to have to do.

22 Ben Higgins: Right. And do you have written agreements with the power
23 companies or how does that work?

24 Richard Pell: That's over my pay grade. Technically—Bill, do we have
25 written agreements?

1 William Frey: [INDISCERNIBLE 00:29:43].

2 Richard Pell: Yeah, that's kind of in the technical expertise of the company

3 but above my pay grade.

4 William Frey: It's actually a [INDISCERNIBLE 00:29:53].

5 Ben Higgins: Mr. Frey, would you mind if I swear you in so I can—

6 [00:30:00]

7 are you open to testifying to the extent that there's questions that you can

8 weigh in on?

9 Richard Pell: He's just got a bad cold.

10 Ben Higgins: Could you please raise your right hand? Do you swear or affirm

11 to tell the truth, the complete truth, and nothing but the truth?

12 William Frey: I do.

13 Ben Higgins: And could you please state and spell your name for the record?

14 William Frey: William Frey. F-R-E-Y.

15 Ben Higgins: Okay, and just I doubt the recording got what you just said.

16 So my question was whether or not there's agreements with the power companies

17 that the debtor has?

18 William Frey: The risk is taken by the homeowner, but right now my

19 understanding is New York State law allows the homeowner to sell the excess

20 power to the grid.

21 Ben Higgins: So the homeowner is the one actually selling the—?

22 William Frey: It's called the net meter, so the power that gets produced,

23 [INDISCERNIBLE 00:30:58] power is 22 cents a kilowatt hour, we sell to them

24 at 15 cents a kilowatt hour. So, if the homeowner sells it back to the grid,

25

1 they're getting 22 cents a kilowatt hour while they're paying us 15 cents a
2 kilowatt hour, keeping a 7 cent arbitrage.

3 Ben Higgins: So the money that's coming to you, it's coming from the
4 homeowner and not the power company?

5 William Frey: The homeowner. And the power company would offset the power
6 that they sell the homeowner with the cheaper power that we're selling them.

7 Ben Higgins: I see, okay. And, as far as your agreement with the homeowners
8 themselves, you have written agreements with each of these homeowners that
9 you have this kind of arrangement with?

10 William Frey: Yes.

11 Ben Higgins: Yes, okay. And about how many of those agreements are
12 currently outstanding?

13 William Frey: We've installed 2700 systems, and we have or had, pardon me,
14 we've installed 2700 and turned them on. We have another 250 that have been
15 installed and not turned on, that U.S. Bank has not thrown a switch yet, and
16 then we have about another 750 that we had contracts with the homeowners,
17 which are likely never going to come to fruition, because U.S. Bank did not
18 actually do anything.

19 Ben Higgins: When you say contracts with the homeowners, these are homes
20 that don't have equipment on it yet, you had installation contracts to
21 install equipment, and those, because of the holdup with U.S. Bank, you don't
22 think those will actually come to fruition.

23 William Frey: I think those assets have been destroyed.

24 Ben Higgins: Okay. And, as far as equipment that you did install, you said
25 there were 2700 systems that you installed and turned the power on and 250

1 where you installed and the power has not been turned on yet, and the debtor
2 would have—

3 William Frey: The term is placed in service.

4 Ben Higgins: Okay, placed in service. And you would have, not you, the
5 debtor would have an agreement with each of these homeowners.

6 William Frey: Yes. Well, we assign the agreement to various funds. So
7 those 250 have been assigned to fund, Level Solar fund four, which U.S.

8 Bank's [INDISCERNIBLE 00:33:10] remove level as managing member. They took
9 over as managing member and then did not throw the switch to turn the 250
10 systems on and basically stared at the other 750 until they went away.

11 Ben Higgins: That was fund four, you said?

12 William Frey: That was fund four, yes.

13 Ben Higgins: This might be a good time—I was going to get into this at some
14 point, but it might be a good time to kind of just get a sense of the
15 overview of the company. So this is a copy, this is a blown up copy of what
16 was in Mr. Pell's affidavit. It appears to be—I have extra copies if there's
17 anyone out there that needs it.

18 Richard Pell: Pretty straightforward.

19 Ben Higgins: Yeah, right, lines going every direction.

20 William Frey: What mind would put something like this together?

21 Ben Higgins: That's a good question. So just maybe we can piece through it
22 a little bit, so the debtor is the entity in the top box.

23 William Frey: That's the entity that went bankrupt, right.

24 Ben Higgins: Correct. And then you have these other entities, starting with
25 Level Solar Master Holdings, and then there's various entities below them.

1 Those are all non-debtor entities. None of those entities have filed for
2 bankruptcy, correct?

3 William Frey: That's correct.

4 Ben Higgins: Are any of those actually operating companies? Do they—?

5 William Frey: No, they're all just shells with assets. Level's on its way
6 to becoming a shell with assets.

7 Ben Higgins: And I believe the affidavit of Mr. Pell, it explains that some
8 of these entities were formed to facilitate the financing. Mr. Pell was
9 talking about how this is a business that requires a lot of upfront capital,
10 so you needed to get the money upfront from the banks, and the banks required
11 or wanted some of these entities formed for the purpose of the actual
12 lending. Do I understand that?

13 William Frey: The bankers and remote entities. So the reason for them
14 [00:35:00]
15 is to isolate the various risks and cash flows.

16 Ben Higgins: I see, okay. And, as far as from what I can tell from the
17 papers, there are two primary banks that you did the lending with, New York
18 Green Bank and First Star Development, is that correct?

19 William Frey: Well, First Star Development also had certainty as an
20 investor, and fund one has Henry Howard, a client of mine on other deals, as
21 an investor in level, and fund two has Level Solar as an investor where they
22 took the tax credits. Fund three has just U.S. Bank or Fund Star or whatever
23 it was called, First Star. And four is a partnership between CertainTeed and
24 U.S. Bank.

1 Ben Higgins: Okay. What's the relationship between First Star and U.S.
2 Bank?

3 William Frey: I think they're one and the same, but—

4 Ben Higgins: Okay. You've been referring to them today as U.S. Bank, and in
5 the papers it's First Star, but just for clarification you think they're the
6 same entity.

7 William Frey: My understanding, they're the same. I'm using them
8 interchangeably.

9 Michael Conway: Just to clarify or correct something that Mr. Frey said, the
10 new manager of funds three and four is Numame, which is an entity that was
11 produced by First Star, just so the record is clear. Numame is spelled N-U-
12 M-A-M-E. We're still waiting for an address on Numame.

13 William Frey: It's an employee at U.S. Bank that handles that.

14 Ben Higgins: Okay. And these entities, the Level Solar Master Holdings
15 Incorporated, that's 100% owned by the debtor, that's correct?

16 William Frey: Essentially what that is, you can take the cash flows from—you
17 put an array on the roof, we own the array, Level owns the array. We sell
18 that array into an SPV. We split the tax benefits off to U.S. Bank or Henry
19 Howard or partnership of U.S. Bank and CertainTeed Corporation. We then own
20 the annuity, the 20 year annuity. That gets pledged to Level Master
21 Holdings, and U.S. Green Bank lent money against that block of cash flows.
22 That, if you look at it, it starts to look and smell like a 20 year mortgage.

23 Ben Higgins: Mm-hmm. Excuse me a second.

24 William Frey: This is obvious, right?

1 Ben Higgins: So to the extent there's a right to payment from some of these
2 agreements, that was initially—it was just an agreement between the debtor,
3 the Level Solar Incorporated and the homeowner, and at some point certain
4 rights under those agreements were assigned to some of these other entities,
5 do I understand that correctly?

6 William Frey: Yes.

7 Ben Higgins: And were those done as each agreement was made?

8 William Frey: Done on a flow basis.

9 Ben Higgins: On a flow basis, okay. And the relationship, well, I'll skip
10 that for now. And since the issues with Richard Kaiser, as Mr. Pell said,
11 you thought you were not getting all the financial information. When some of
12 this information came to light and you decided that you needed a
13 restructuring and the worker's comp issue arose and you needed to shut down
14 the business, now you're no longer looking to have this fully integrated
15 model where you're selling the agreements to the homeowners and actually
16 installing the systems yourselves. Is that correct?

17 William Frey: Yeah. There's no reason to have—we've been approached by many
18 smaller companies or companies about the size of level that seek to use the
19 financing that we were able to establish from them, so the question that's
20 facing Richard and me is when the dust settles, do we want to do that? And
21 right now we just don't have the bandwidth to do 10 levels and provide the
22 financing.

23 Richard Pell: And the challenge will be to find a supplier of tax equity,
24 because it's become more scarce, but there may be a business there.

1 Ben Higgins: And, when you say you want to use the financing model that you
2 established for level, you mean there would be some agreement with these
3 current lenders or a similar model with different lenders?

4 William Frey: Well, based on the way—I mean, the New York Green Bank has
5 been excellent. U.S. Bank looked and watched as they were a managing member
6 and watched \$35 million of assets be burned to the ground. I have a problem
7 with that when it's my money, especially when they control it. So

8 [00:40:00]

9 I would be reluctant to bring them in.

10 Ben Higgins: Right. And the type of model that you would employ going
11 forward, it would be reaching agreements with homeowners similar to what you
12 had with Level Solar where some lender, New York Green Bank or somebody else,
13 would come in, fund the money upfront, the agreement would be with the
14 operating entity, and then some of the rights to those streams of payments
15 would then be assigned to these new entities.

16 William Frey: We would have to find a new partner to take the investment tax
17 credits, and there are a number out there. I just don't know whether they'll
18 do it in this—when the world changed a month ago, the change in the tax code.
19 And then we would have to find a leverage facility, either New York Green
20 Bank or some other facility.

21 Richard Pell: And that's doable.

22 William Frey: That's doable. I mean, this can be replicated, if we want to
23 put our time into it.

24 Ben Higgins: Okay. All right. So currently you said you have two
25 employees. I believe you have monthly payroll of \$20,000. Is that correct?

1 Richard Pell: It would probably even be less than that, but we're estimating
2 that that's where it would be at first.

3 Ben Higgins: And that will just be for those two employees?

4 Richard Pell: That's right. The other folks are working [INDISCERNIBLE
5 00:41:20].

6 Ben Higgins: And the other folks, just for clarification, so, Mr. Frey,
7 you're listed as a CEO. Mr. Pell, you're the secretary. And, Mr. Frey, your
8 wife Carrie Frey is the treasurer, is that correct?

9 William Frey: That's correct.

10 Ben Higgins: Are there any other officers or directors of the debtor?

11 William Frey: No.

12 Ben Higgins: And previously Mr. Kaiswer had been the CEO of the company,
13 and—

14 William Frey: That's correct.

15 Ben Higgins: And who were the other officers previously of the debtor?

16 William Frey: Was Scott?

17 Richard Pell: I don't know whether Scott was technically an officer or not.

18 Ben Higgins: Right, so I have—I'm looking at the statement of financial
19 affairs, which, for the record, is docket number 36, and it looks like
20 previously Richard Kaiser and then Scott.

21 William Frey: Yeah, Scott was the financial guy.

22 Ben Higgins: How do you pronounce Scott's last name?

23 William Frey: Paterniani. I'm sorry.

24 Ben Higgins: No, that's okay. For anybody who has to type up that
25 transcript, that's P-A-T-E-R-N-I-A-N-I.

1 Male: Is he an officer?

2 William Frey: Yeah. Well, he was the controller of the company.

3 Ben Higgins: And what was his role in the company?

4 Richard Pell: Lying to us.

5 William Frey: His official role was producing financial books and records,

6 overseeing the conveyance of financial information based on where Richard

7 Kaiser needed it, helping with the spread sheets to put presentations

8 together, dealing with banks. We just—I mentioned earlier that we were

9 pressing Richard at various points to broaden the management team to include

10 a CFO, because, as the business was increasing in complexity, we just felt

11 the sophistication needed in the key financial position was going to be

12 larger and larger.

13 Ben Higgins: As far as the debtor's current slimmed down business, do you

14 know what the total monthly expenses are at this point? I know you probably

15 have been working out the monthly operating report at this point. I don't

16 know if you—

17 William Frey: Salaries plus another 6,000 or so, \$2,000—

18 Richard Pell: Software, we want to keep some of our software systems

19 running.

20 William Frey: Plus lawyers.

21 Michael Conway: There was a discussion as early as this morning about

22 whether to keep certain software, inventory software in place which would add

23 a few thousand dollars, but we're not sure yet, but it's fairly much in line

24 with what was in Mr. Pell's estimate, in his declaration, which is I believe

25 exhibit A.

1 Ben Higgins: Yeah, I believe you're correct with that. And does the debtor
2 have a physical location at this point?

3 Richard Pell: Closest thing is my office in Greenwich.

4 William Frey: The cloud. I mean, basically we've surrendered all our
5 premises.

6 Ben Higgins: So you're not currently paying any rent at this point?

7 William Frey: No.

8 Ben Higgins: Okay.

9 Richard Pell: We get our mail delivered to a PO box in Greenwich. My
10 personal assistant gets it. She opens it, sorts it, arranges to get whatever
11 paid paid and, you know, she keeps the admin side going along with Peg, the
12 accountant.

13 Ben Higgins: And she's one of the two employees?

14 Richard Pell: No, she's an employee of mine.

15 William Frey: You're talking about Peg or you're talking about Sharon, his
16 assistant? The accountant?

17 Richard Pell: Peg is paid by level. Karen is—

18 William Frey: Sharon is paid by me or my company, which is me.

19 [00:45:00]

20 Ben Higgins: Okay. And the debtor still has revenue coming in, correct?

21 William Frey: Revenue, there's several sources of money coming in. First is
22 money that comes in through the PPAs, which basically goes to the funds and
23 goes to U.S. Bank or First Star and New York Green Bank indirectly through
24 Level Master Holdings. The second source of revenue is Level has some number
25 of arrays that forever, for whatever reason, did not go into the funds, and

1 we get a few thousand dollars a month, a minimal amount of cash from those.

2 And then the next source of revenue is we own what's called an SREC, a solar

3 renewable energy credit in Massachusetts, and I believe that that's about

4 \$15,000 a month. I don't know at what point in time we're paid that. I

5 believe it's quarterly, and I don't know that we've gotten that cash yet.

6 Ben Higgins: And that's coming from the state of Massachusetts?

7 William Frey: That's correct.

8 Ben Higgins: The money coming from the PPAs that's going directly to the

9 funds—

10 William Frey: At the end of the day, that's paying off the Green Bank

11 through Level Master Holdings. So, while Level does not get the cash,

12 Level's liabilities in direct through the Master Holdings are being increased

13 as that's being paid down.

14 Ben Higgins: Was Level a guarantor of loans that were made to—?

15 William Frey: No, Level's not the guarantor. The credit of the asset in

16 Level Master Holdings, Level Solar Master Holdings is a diversified pool of

17 20 year streams of cash flows from homeowners from the electricity payments.

18 Ben Higgins: So just to make sure I understand what you're saying correctly,

19 that money is going to pay down the secure creditors.

20 William Frey: That are in the banker's remote [INDISCERNIBLE 00:47:05].

21 Ben Higgins: Right, and to the extent that those loans are eventually paid

22 off, then that revenue stream is then something that could be moved back up

23 to the debtor.

24 William Frey: Correct.

25

1 Ben Higgins: Okay. And then some of the arrays you said were just purely
2 owned by the debtor, they were never assigned to—

3 William Frey: A small number.

4 Ben Higgins: Do you know roughly how many?

5 William Frey: A couple dozen, one or two dozen.

6 Richard Pell: I think I've found about 50.

7 William Frey: 50. I didn't mean to mis-number.

8 Richard Pell: I think I've got them all by homeowner now, so I just don't
9 remember the number.

10 William Frey: Let's put it this way, I didn't know about them until we—
11 there's a lot of things I didn't know until we—

12 Ben Higgins: How much money would you get from one array in a given month?

13 William Frey: \$100, \$150. It would depend on the array, it would depend on
14 the month of the year, but \$1500 a year, something like that.

15 Richard Pell: Yeah, depends on the size of that roof, depends on the
16 radiation factor, so—

17 William Frey: It's not 100, it's not 10,000.

18 Richard Pell: So the same sized roof will give you more power in New York
19 than it will in Massachusetts, which is further north.

20 Ben Higgins: Okay. To the extent that the debtor has post-petition
21 expenses, are those being paid on time? I mean, you mentioned there's no
22 rent. I guess there's just salary and potentially software. Are there any
23 other current expenses that the debtor has at this point?

24 William Frey: No, not really.
25

1 Richard Pell: Just the insurance and then administrative cost, which we have
2 not actually been approved yet as counsel, but eventually there'll be a legal
3 expense, and then there'll be an expense for the forensic accountant, but
4 there'll be no other operating expenses.

5 Ben Higgins: Okay. And you don't have any leases anymore. You've left all
6 the premises, and I assume you intend to reject all the leases. Is that—

7 William Frey: Correct.

8 Richard Pell: I think there's an issue with one facility where we got
9 trucks, and they haven't been able to get the trucks out of the warehouse or
10 something.

11 Ben Higgins: Well, where are the trucks at this point?

12 Richard Pell: Bill, are you still driving one from one place to another?

13 William Frey: No. I believe there's three left in Massachusetts that we do
14 not own where we've told the banks take them back. I don't know whether
15 they've come and picked them up. There were three that were inside a
16 warehouse in Brooklyn, and the landlord wanted us to come and open the door,
17 and—

18 Michael Conway: Those are not owned by Level Solar.

19 William Frey: Those are not owned by Level Solar. There was also a forklift
20 there. I think we told him to walk across the street and open the damn door,
21 otherwise he's not going to get his warehouse back.

22 Michael Conway: If I may, was your question what vehicles does the debtor
23 have?

24 Ben Higgins: Yeah, my question is, yeah, the seven vehicles that are listed
25 on the schedules, where are those?

1 William Frey: There's three classic VW buses

2 [00:50:00]

3 that Kaiser, for whatever reason, decided he needed to own with our money.

4 Those are in the Hicksville Office.

5 Richard Pell: I think everything's in the Hicksville location other than one

6 truck, who it's sitting with a dealer that's a subject of a motion to sell.

7 William Frey: I think they may be in Ronkonkoma. I think they're in the

8 Ronkonkoma office. There may be one or two in Hicksville. The rest of them

9 are in--okay, there's vehicles that are going back. I'm not sure whether

10 they've been picked up yet. The banks have been notified. They've picked up

11 a lot of them. They haven't picked up all of them.

12 Ben Higgins: When you say going back you mean being repossessed by the

13 banks.

14 William Frey: Repossessed.

15 Richard Pell: Yeah, there are different lenders like [PH 00:50:44] Ally, I

16 think Wells Fargo was one, and some were prompt in retrieving their vehicles,

17 others were not.

18 William Frey: The three Volkswagen buses are in Hicksville. I believe the

19 rest of the vehicles that we own outright are in Ronkonkoma, but there are

20 vehicles in Massachusetts, probably last I heard Massachusetts, Brooklyn,

21 Hicksville, and Ronkonkoma that still need to be repossessed. They're not

22 part of the seven vehicles.

23 Ben Higgins: Okay. And, when you refer to the Hicksville office or the

24 Ronkonkoma office, what is--as far as I understand, the debtor doesn't have

25 any physical location at this point. Are you--

1 Richard Pell: Yeah, but formally we had a warehouse and office space in-

2 William Frey: We basically-I've talked to the landlords, and the trucks are
3 still out in the back.

4 Ben Higgins: And based on-you had a lease with the landlord. It still
5 technically hasn't been rejected yet and the-

6 Richard Pell: Have we rejected it? I think we've rejected them. We've
7 surrendered them.

8 William Frey: We have agreements pre-petition to surrender leases. Part of
9 the agreement was we store the vehicles there until we dealt with them
10 through the bankruptcy, so we have vehicles that with everything goes
11 according to plan will be picked up by an agent who will sell them on his lot
12 on a commission basis. We have to get that approved by the court. And we
13 have one vehicle, like I said, which is subject to an offer to purchase right
14 now, so six vehicles to be picked up and sold on a commission basis, one
15 vehicle already at a dealer who's made an offer, and, if it's approved, that
16 dealer will take that. But they are sitting right now in a location where we
17 have a surrender agreement that allowed us to store the vehicles after
18 surrendering the property.

19 Ben Higgins: Okay. But you're not currently paying anything to the landlord
20 for that, and they're just basically letting you keep the vehicles there?

21 William Frey: That's correct.

22 Ben Higgins: All right. I'm going to run through your schedule quickly with
23 you. So I'm looking at this is ECF number 35, for the record. These are the
24 schedules that were filed in this bankruptcy case. Mr. Frey, had you seen
25 these schedules, have you reviewed these schedule before?

1 William Frey: I've skimmed them. I have not carefully reviewed them.

2 Ben Higgins: Okay. First off, you have your bank accounts. We've discussed
3 those already. From what I understand, the certificate of deposit has
4 already been closed, and the Citibank checking account is in the process of
5 being closed. I'm on the front page of the schedules.

6 William Frey: I know we're in the process of looking for a debiting account.
7 Where we are in the status of these two accounts—has Peg closed them?

8 Richard Pell: I think CD account is closed.

9 William Frey: My understanding is the CD is closed.

10 Richard Pell: And that money was just deposited into the checking account.

11 Ben Higgins: Okay. Turning to the next page, you have listed is \$31 million
12 in accounts receivable over 90 days old. I assume these are your rights to
13 receive payment through the homeowner agreements. Am I understanding that
14 correctly?

15 William Frey: Yes.

16 Ben Higgins: And, to the extent it says they're over 90 days old, it's not a
17 case of you haven't been collecting them, correct, or there's nothing that
18 the debtor has to do to go to collect these?

19 William Frey: Just sit, in the next 20 years we get the cash flows.

20 Richard Pell: A lot of it's ACH, automatic monthly.

21 Ben Higgins: It's automatic transfers, okay. The next page you have the
22 entities that the debtor has 100% interest in, so based on the chart we
23 talked about Level Solar Master Holdings. I have the wrong piece of paper
24 here. So this entity here. And then there's also listed 100% interest in
25 Level Solar fund two, which on the chart in the affidavit it said the line

1 here goes directly to level Master Holdings, but is it correct that the
2 debtor actually owns 100% of that entity or—?

3 Richard Pell: Let me ask you, you asked earlier whether there's anything
4 that needs to be changed. This is a question
5 [00:55:00]

6 more because, when we initially filed, it was assumed it was owned by Level
7 Solar Master Holdings. It was in the chart. Then we found documents that
8 Richard Kaiser had that indicated it was owned by Level Solar Inc., which is
9 what went into the schedules. Since these schedules were filed, I've been
10 provided information which might mean that it's actually owned at the level
11 Solar Master Holdings level.

12 Ben Higgins: So you're—go ahead.

13 William Frey: Can I explain the economics of this?

14 Ben Higgins: Please.

15 William Frey: Level Solar Inc. got the investment tax credits from fund two.
16 All the cash flows after that get assigned to Master Holdings, or almost all
17 of them, if it's not all of them.

18 Ben Higgins: And four—so pardon me thinking with my lawyer brain and not my
19 businessman brain, but the entity that technically owns Level Solar fund two
20 is not clear. Is that—

21 Richard Pell: It's not clear to me at this point in time, so, when you ask
22 whether we have to change anything, that might be something that needs to be
23 changed. [PH 00:56:12] Aiden Gump did the actual deal work here, and they're
24 the ones that provided me some information that leads me to believe that it
25 might be at Master Holdings level, but I haven't had that phone conversation

1 yet with the attorney who has the historical knowledge. But, once we have
2 that, if it needs to be fixed, we'll fix it. The audit, there were supposed
3 to be audits done every year, there weren't. But the 2015 audit which was
4 done in 2017, it looks like, indicates that it was owned by Level Solar Inc.
5 So the question in my mind was, well, if the auditors found it was owned by
6 Level Solar Inc., that should be in the schedules, but now it may be that was
7 incorrect.

8 William Frey: I think you have to separate the tax credits from the annuity
9 portion. The tax credits have already been generated by level two. Those
10 would have consolidated with a tax bill Level Solar Inc. hat. So from an
11 economic point of view, the rest of the cash flow is going to Level Solar
12 Master Holdings, so whether it's a dotted line to Level Solar Inc. and then
13 down, it doesn't really matter. The money goes—

14 Ben Higgins: Right, where the money is going is to—

15 William Frey: The money goes to Master and they're too paying Green Bank.

16 Ben Higgins: And, just so I understand correctly, we had spoken earlier that
17 the debtor Level Solar Inc. was the managing member of Level Solar Master
18 Holdings and is no longer the managing member of that entity, is that
19 correct?

20 William Frey: It's no longer the managing member of Master Holdings or one,
21 two, three, or four.

22 Ben Higgins: Who is the managing member of Master Holdings?

23 William Frey: Green Bank has taken over.

24 Ben Higgins: And are there other members of the LLC?

1 William Frey: I think it's 100% owned by Level Solar, so Level Solar Inc.
2 presumably is a member of that LLC, but not the managing member.

3 Ben Higgins: Okay. And, besides New York Green Bank and Level Solar Inc.,
4 are there any other members of that LLC?

5 William Frey: I don't believe so. You know of any?

6 Richard Pell: No.

7 Ben Higgins: And, of the four funds, so Level Solar is no longer the
8 managing member of any of those four.

9 William Frey: That's correct.

10 Ben Higgins: That's correct. And I think you already said this, but I just
11 want to make sure I have it clear in my head, who is the managing member of
12 Level Solar fund one?

13 William Frey: Green Bank.

14 Ben Higgins: And who's the managing member of fund two?

15 William Frey: Green Bank.

16 Ben Higgins: And fund three?

17 William Frey: U.S. Bank.

18 Ben Higgins: And fund four?

19 William Frey: U.S. Bank or Numame, whatever you want to call it.

20 Richard Pell: Numame LLC.

21 Ben Higgins: And Numame is an entity that you believe was formed by U.S.
22 Bank?

23 Richard Pell: It was formed by First Star.

24 Ben Higgins: By First Star, okay, that's helpful. Thank you. Sorry for
25 going through that again. Just turning back to the schedules.

1 William Frey: This wasn't obvious?

2 Ben Higgins: Took me a few reads to try to get a handle on it.

3 William Frey: You can begin to see why the solar industry has some problems

4 figuring out how to finance itself.

5 Ben Higgins: You've listed some inventory, that's actual hard solar

6 equipment that the debtor still possesses.

7 Richard Pell: I'm trying to give it back to the—

8 William Frey: There's very little. How much is listed there?

9 Ben Higgins: It's listed as unknown amount.

10 William Frey: It's a de minimis amount.

11 Ben Higgins: A de minimis amount.

12 William Frey: I would put it at zero at this point. Everything that we can

13 have of value has gone back with maybe a handful of panels that are in

14 conception.

15 Richard Pell: Actually Bill and his wife Carrie have been doing the service

16 trying to connect suppliers of panels with where they're left in warehouses

17 and get rid of them as efficiently as possible.

18 Ben Higgins: And to the extent there still is some hard material—

19 William Frey: I would say it's de minimis. If it's \$10,000, I'd be

20 surprised.

21 Ben Higgins: Okay.

22 [01:00:00]

23 Richard Pell: The reason for that is pre-petition some of the suppliers

24 picked up their inventory. There may have been some left behind because it

25 was open or broken. So it's dent and scratch material any leftover.

1 William Frey: Yeah, there was some breakage. Think of those horrible
2 advertisements about the movers.

3 Ben Higgins: I've experienced that. Okay, we've gone over the vehicles
4 already. I don't think we need to go through that again. There's some IP
5 listed, so you have some trademarks, the domain name, LevelSolar.com, and
6 then some sales data. Anything you want to add to that, that portion of the
7 debtor's assets?

8 William Frey: I guess we discovered our trademark is pretty much a global
9 trademark, yeah?

10 Richard Pell: Yeah, he's hired lawyers to secure the Level Solar brand all
11 over Europe, all over the world.

12 Ben Higgins: And when you say he, you mean Richard Kaiser?

13 Richard Pell: Kaiser, yeah. That was sort of interesting, given that I
14 wouldn't let him go into Rhode Island.

15 Ben Higgins: Okay. And speaking of Richard Kaiser, the next item I wanted
16 to ask about on the schedule, so you have causes of action, un-liquidated
17 claims of not less than \$35 million against Richard Kaiser, former employees,
18 and other third parties. I guess first who else do you potentially have
19 claims against besides Richard Kaiser?

20 William Frey: U.S. Bank.

21 Ben Higgins: U.S. Bank.

22 William Frey: They took over as managing member and burned 35 million of
23 assets to the ground.

24 Richard Pell: There are other parties. I don't know if we want to go
25 through the whole list.

1 Michael Conway: Yeah, without going into too much detail because of
2 confidential nature, but there were a number of employees who left taking
3 confidential information with them in violation of their agreements not to do
4 so, took it to other companies. Those companies then went to the homeowners
5 that we had contracts with and convinced them to breach those contracts and
6 allow their new companies to build the panels. Earlier Mr. Frey indicated
7 that there were 750 or so homes that were considered assets that were burnt
8 to the ground. We believe the majority of those were taken by other
9 competitors who utilized the former employees that sold those homes
10 initially, hired those employees, and then convinced the homeowners to breach
11 their agreement with Level Solar and then renew agreement with a competitor.
12 So there'll be litigations relating to those former employees who breached
13 their agreements and their new employers. They are separate and apart from
14 any claims against Richard Kaiser.

15 Ben Higgins: Is that your understand as well, Mr. Pell and Mr. Frey?

16 William Frey: Yeah.

17 Ben Higgins: Is that accurate?

18 Richard Pell: Correct.

19 Ben Higgins: Okay. To the extent that there is anticipated litigation
20 against former employees, Mr. Kaiser, U.S. Bank—

21 Richard Pell: That may be First Star.

22 Ben Higgins: First Star. I'm not going to ask you for your litigation
23 strategy, but have you made any steps towards any of this?

24 William Frey: Yes.

25 Michael Conway: We've been conducting interviews with a number of folks.

1 Richard Pell: We've also sent legal hold letters out to most parties.

2 Ben Higgins: Okay. You also have—going back to your schedules, what's
3 listed as assets, you have capitalized solar arrays of just shy of \$10
4 million. Could you just explain what that line item means? What you mean by
5 that?

6 William Frey: I would guess that that's the equity level has in Master
7 Holdings, but I'm not sure.

8 Richard Pell: It was explained to me that that was the residual value of the
9 Level Solar-owned projects that didn't get transferred.

10 Ben Higgins: The 50 arrays that you mentioned before.

11 William Frey: No, the 2700.

12 Ben Higgins: Oh, okay.

13 William Frey: I would think that once we pay off Level Solar Master
14 Holdings, that money is the back end of that deal. That's what I would think
15 it is. I could be wrong.

16 Richard Pell: And it could be a combination of both.

17 William Frey: Yes, the 50 systems that are Level Solar are not worth a lot
18 of money. That's a million buck's worth of systems.

19 Ben Higgins: So the—okay, we'll leave it there, unless

20 [01:05:00]

21 you want to add anything to that, Mr. Pell.

22 Richard Pell: No.

23 Ben Higgins: All right, so that's it for assets. Skimming ahead, so for
24 secure debt, because of this financing model that you had, it seems all the
25 secured debt was done at the lower level entities, and the only secured debt

1 you have listed on your schedules, they don't actually appear to be lenders.

2 There's just the lenders for the actual solar panels, there's the vehicle

3 loan, and then there's Cooper Friedman Electrical Supply. Is my

4 understanding correct?

5 William Frey: That's correct.

6 Ben Higgins: And could you tell me about—Cooper is also listed as an

7 unsecured creditor for I think \$4 ½ million. Could you tell me about the

8 debtor's relationship with Cooper?

9 William Frey: Well, initially we bought our panels directly from LG, a

10 Korean panel manufacturer. They yanked our credit at some point. That

11 should have been an early warning signal in our brain, but we didn't really

12 get it. Coopers is a distributor. They'll take panels from LG, from

13 anywhere, and they warehouse them, and they're a middle man. We were a good

14 customer of Coopers. Kaiser wanted them to become a supplier of working

15 capital to the company. They were very accommodating. So they gave us very

16 generous credit terms basically they did a warehouse for panels.

17 Richard Pell: We found out of the magnitude of Coopers after we threw Kaiser

18 out.

19 Ben Higgins: I see.

20 Richard Pell: We didn't know he had borrowed \$5 million.

21 Ben Higgins: I see.

22 William Frey: The business was consuming more cash then we realized based on

23 the phony numbers that we had been looking at, so constantly looking for the

24 next source of money to plug the hole.

1 Ben Higgins: Okay. The only other—well, I shouldn't say that, but you also
2 list as an unsecured creditor QED LLC which has a \$7.5 million unsecured
3 claim.

4 William Frey: That's me, that's my family office.

5 Ben Higgins: Okay. And that's an LLC that you own?

6 William Frey: I run investments out of QED.

7 Ben Higgins: I see. And QED is also listed as a shareholder.

8 William Frey: That's correct, just an investment vehicle.

9 Ben Higgins: Okay. And did you—so QED loaned money to the debtor, is that
10 what that \$7.5 million is?

11 William Frey: Correct.

12 Ben Higgins: And when was that loan made?

13 William Frey: 15, 16, 17, you know.

14 Michael Conway: Probably four financings are included in that number.

15 Richard Pell: You were part of the revolver, right?

16 William Frey: I was part of the revolver. I lent him half a million,
17 quarter of a million at a pop, just send him over some money when he needed
18 it.

19 Richard Pell: There was originally—I think, I don't know, we were in for 3
20 million, my wife Lisa, and then QED a similar amount, I believe?

21 William Frey: Yeah, something like that.

22 Richard Pell: And so there would be draws, occasionally repayments of
23 principle, occasionally payments of interest, and I think we went over the
24 limit anyway, because we were told it was a short term thing.

1 Ben Higgins: So, in addition to that, the equity funding you provided, you
2 also provided a revolving loan.

3 William Frey: We were trying not to dilute the hell out of the shareholders.

4 Ben Higgins: There's also significant claims listed for Kevin Johnson. Can
5 you tell me about Kevin Johnson, the nature—?

6 Richard Pell: He's another investor.

7 William Frey: Yeah, see, unfortunately, when I was in the phase of still
8 believing in Kaiser and the business, I brought a number of friends in,
9 because I thought they had skillsets that at some point might be useful to
10 the company. Kevin's a successful entrepreneur. He built a software company
11 and eventually sold it to a public company Avnet. But it was a very
12 successful enterprise. I brought in other friends, Owen Blicksilver, who's a
13 PR expert.

14 Richard Pell: I brought him.

15 William Frey: John [PH 01:09:00] Minx who is a global facilities guy for
16 Jones Lang Lasalle. We brought in a friend of ours who's a well-respected
17 lawyer in Connecticut. I brought in a friend who's a private equity guy from
18 Los Angeles. Unfortunately, when things started deteriorating, I was
19 personally very embarrassed about dragging some of these people in to an
20 unsuccessful and very deceptive operation, so I repurchased their shares at
21 great personal cost. But Kevin Johnson, he was hired as an interim CEO when
22 Kaiser was terminated, and we had to give him some incentive to work in the
23 company, so we actually agreed to pay him I think it was \$80,000 a month,
24 but, because we weren't confident we had any cash, we paid him \$80,000 a
25 month in convertible debt. Basically

1 [01:10:00]

2 in March of 2017 the company had raised capital mainly from my wife, but I
3 think also from you, in an issue of convertible notes, 8.0% notes due in five
4 years in 2022. So we agreed that Kevin would accrue an \$80,000 face value
5 interest in those notes on a monthly basis while he was working for us. And
6 we used Kevin's services for approximately four months until that date when
7 all the employees were let go and basically we decided we couldn't justify
8 paying a fulltime interim CEO to oversee a workout process.

9 Ben Higgins: Just moving—that's the only questions I had regarding the
10 actual creditors. You have a number of executory contracts, leases, so, as
11 far as the real estate leases, you're no longer there, you're rejecting all
12 those or will be moving forward, that's correct?

13 William Frey: Yeah. I think almost all the landlords, to my understanding,
14 is they were happy to sign surrender agreements and nullify the leases,
15 because they didn't want to get dragged into a protracted bankruptcy process.
16 I think there's one exception to that.

17 Richard Pell: Two.

18 William Frey: Two.

19 Ben Higgins: And then this is a question that may be directed more towards
20 your counsel, is there a reason that the homeowner agreements are not listed
21 on the schedule as agreements that you intend to assume?

22 Richard Pell: The majority of the homeowner agreements have been assigned.
23 There were apparently some agreements that were not assigned. We don't have
24 them yet. We're trying to find them.

1 Ben Higgins: And to the extent there are agreements that had not previously
2 been assigned and are property of the debtor or that the debtor is a party
3 to, is your intention to assume those agreements?

4 Richard Pell: Absolutely, I think so. No reason not to, they just generate
5 income.

6 William Frey: They're just assets.

7 Ben Higgins: And then how about the—there were a number of agreements, you
8 mentioned earlier that—agreements to install that Level Solar had never
9 actually gone forward with the install, would those, again, maybe more
10 towards counsel, would these be considered executory contracts?

11 Michael Conway: Which ones now?

12 Ben Higgins: The ones where the actual equipment hadn't been installed yet,
13 and agreements were signed.

14 Michael Conway: Yeah, those—it's hard to qualify right now whether those are
15 executory contracts. Bottom line is, if they turn out to be executory
16 contracts, I need to amend the schedule, I need to do it under seal, because,
17 if we're going to make those parties known publicly, then we're shooting
18 ourselves in the foot, so to the extent that we have to amend the schedule
19 and put those on as executory contracts, we believe that all those contracts
20 have been breached and that the extent that they exist, they existed in a
21 breached state.

22 Ben Higgins: Breached by the debtor for not doing the installations?

23 Michael Conway: No, breached by the homeowner for allowing somebody else to
24 come in and do the installation for them.

1 Ben Higgins: Okay. I think those are all the questions I had about the
2 schedules. I had one or two questions about the statement of financial
3 affairs, which, for the record, is docket number 36. So you currently list
4 revenue, since these schedules were filed, which was only I think a week ago,
5 from the petition date of \$12 million, but that's—I want to make sure I
6 understand this correctly, that's not all revenue that's going directly to
7 the debtor, that's revenue—is that total revenue for all the—

8 Richard Pell: This is from the first of 2017.

9 William Frey: To the filing date.

10 Richard Pell: To the filing date.

11 Ben Higgins: Oh, okay. I apologize. I misread that. So that is revenue
12 just that the debtor itself earned from that period of time.

13 Michael Conway: That seems high to me.

14 Richard Pell: That's what the financial records show that we have right now.
15 There were revenues, gross revenues of \$12 million last year.

16 Ben Higgins: For the entity that's just the debtor itself.

17 Richard Pell: Just the debtor.

18 Ben Higgins: Okay.

19 William Frey: That's a number that would include the taxable profit Level
20 would have selling the array to one of these SPBs, that's not a cash flow.

21 Ben Higgins: Okay, right.

22 William Frey: There's a lot of money that goes all over the place that's in
23 notional form and is not actually money moving.

24 Ben Higgins: Okay.

25 [01:15:00]

1 My one other question about the statement of financial affairs, on page 6,
2 it's actually ECF page 7 of 19, it's where you list your various litigation,
3 and there's a number of outstanding legal actions pending there. Could we
4 run through those very quickly? Could you tell me about the [PH 01:15:24]
5 Warnack case that's listed first there?

6 William Frey: Defer to Mike there.

7 Michael Conway: That was a New York Warnack case with New York plaintiffs
8 filed just before we filed bankruptcy. There's been no movement. They're
9 waiting to see where we're going to go next.

10 Ben Higgins: And are those plaintiffs, are they listed on the schedules as
11 creditors or potential creditors?

12 Michael Conway: There's only one plaintiff, and he's listed as a notice
13 party, and I think he was listed as an un-liquidated creditor, but at the
14 very least as a noticed party.

15 Ben Higgins: Okay. You have Sonepar, that appears to be a concluded
16 reclamation of goods.

17 Richard Pell: Sonepar is Coopers.

18 Ben Higgins: Coopers, okay, and they've already reclaimed whatever hard
19 assets they had.

20 Richard Pell: Mm-hmm.

21 Michael Conway: They filed an action shortly before the petition, and it was
22 resolved on the date that there was the first appearance.

23 Ben Higgins: Okay. There's two looks like issues with the landlord, I'm
24 assuming, [PH 01:16:33] Grow Cash Realty Associates LLC, and those are both
25 concluded at this point?

1 Michael Conway: Right, they took the space back. There were some issues
2 relating to a forced settlement agreement by the court that required us not
3 just to give the stakes back but to pay \$10,000, so I believe that settlement
4 agreement for the 10 floor is going to be rejected. There was a
5 [INDISCERNIBLE 01:17:02] 11 floor which I don't think is an issue.

6 Ben Higgins: Okay. Then there's a consumer fraud claim of Jeffrey Comeau,
7 it's C-O-M-E-A-U. Could you tell me about that?

8 Michael Conway: That was a case where the homeowner didn't know who was
9 going to be working on the systems going forward, because of Level Solar's
10 situation. Once they realized that Sun Nation was coming in and taking over
11 management and maintenance of all the systems, that went away.

12 Ben Higgins: Okay, so it's listed as pending, but it's no longer pending?

13 Michael Conway: It's pending, but it's no longer, in our opinion, an issue.
14 It's just a homeowner asking for somebody to tell them who's going to take
15 care of my system.

16 Ben Higgins: There's the New York State Department of Labor Investigation,
17 the Warnack Investigation.

18 Michael Conway: And that's pending. That's just a matter where they're
19 trying to get their arms around what the circumstances were of Level Solar
20 terminating their employees, and we're actually in communications as we
21 speak.

22 Ben Higgins: Okay. And then there's the worker's comp claim.

23 Richard Pell: That's the guy who fell off the roof, right?

24 Michael Conway: Yes, and that's really an action against the worker's comp
25 board, the trust fund where we're likely going to be held responsible in some

1 way if there was no worker's comp insurance in place, but that hasn't been
2 established yet at the time of the fall whether there was or wasn't insurance
3 in place. Again, that's something—it's an investigation that we've been
4 exchanging information with them, giving them the employees wage information
5 so they can calculate what was owed to the employee, and now they're trying
6 to determine whether or not it's an insurance coverage issue or whether we're
7 going to be asked to step up and self-insure.

8 Ben Higgins: And is that individual listed as a creditor in in the
9 schedules?

10 Michael Conway: He is listed as a notice party, I believe. But he's paid in
11 full, and he hasn't filed a claim against the debtor directly.

12 Richard Pell: I think we've picked up some medical [INDISCERNIBLE 01:19:20].

13 Michael Conway: Yeah, he was paid in full in terms of wages when he stopped
14 working, and so to the extent that he becomes a creditor, he'll be something
15 he determines when he files the claim. He's a noticed party now.

16 William Frey: It's remotely possible there could be a claim against the
17 manufacturer of the safety harness that failed, I'm not sure.

18 Michael Conway: Right, but that's really—we may be [INDISCERNIBLE 01:19:47]
19 if we have to self-insure. But we're not at that point yet.

20 Ben Higgins: You mentioned Sun Nation, and I realized I didn't ask about
21 that earlier, but so Sun Nation is—one of you tell me about Sun Nation.
22 [01:20:00]

23 William Frey: Sun Nation is handling servicing, the maintenance, the O&M,
24 it's called, operations and maintenance of the 2700 arrays, which means
25

1 they're fixing them, they're dealing with the customers, and they handle the
2 bill, the ACH bill.

3 Ben Higgins: And do you have a written agreement with Sun Nation as well?

4 William Frey: We have a written agreement with Sun Nation.

5 Ben Higgins: Was that a pre-petition agreement as well?

6 William Frey: Yes, yes.

7 Ben Higgins: Okay.

8 Richard Pell: Is that at the debtor level or at the fund level?

9 William Frey: Probably at the fund level.

10 Ben Higgins: Okay. Well, your counsel will talk to you guys if it is an
11 obligation—if it is an agreement that the debtor is a party to, it might be
12 something that would be added as something to assume, but we don't have to
13 get into that at the moment.

14 William Frey: I'm pretty sure it's at the fund level.

15 Ben Higgins: Just a few more questions and then I'll open it up to
16 creditors.

17 William Frey: Except the 50 arrays or whatever that Level owns directly.

18 Ben Higgins: Have you contemplated selling the business at all, selling the
19 debtor?

20 William Frey: Yes, but, until we get this sorted out, I don't see that there
21 is any economic way to do that.

22 Ben Higgins: Okay. Outside of the debtor's ordinary course of business,
23 were there any assets transferred to any other business or persons prior to
24 the petition?

25 William Frey: No.

1 Ben Higgins: Okay.

2 William Frey: Do you know of any?

3 Ben Higgins: Well, you have the allegations about Mr. Kaiser, but I'll—

4 William Frey: Aside from Kaiser taking money from the company and sending it

5 to shell LLCs that he controlled.

6 Richard Pell: Do we know—is that true?

7 William Frey: Yeah.

8 Ben Higgins: Aside from those allegations, as far as you know, there weren't

9 any transfers?

10 William Frey: No, certainly not to the investors.

11 Michael Conway: I think he's also just thinking in terms of general assets,

12 and, to answer those, not to our knowledge.

13 Ben Higgins: Okay. Have any pre-petition liabilities been paid since the

14 filing, other than the ones that you've obtained court authority to do?

15 William Frey: Not that I know of.

16 Richard Pell: I mean, we're paying Peg and—

17 William Frey: Those are not pre-petition. Nothing.

18 Ben Higgins: Okay. Has the debtor paid any bonuses since the filing of the

19 bankruptcy case?

20 William Frey: No.

21 Ben Higgins: Okay. And you said yourselves you're not taking any salary.

22 William Frey: Not taking any salary.

23 Ben Higgins: Okay. You've talked pretty extensively about what has to

24 happen to emerge from this case, so I won't belabor that, unless you want to

25 add anything to what you have to do to move forward. My last point before I

1 open it up to any creditors is just to remind you. I have to read this. The
2 debtor must file monthly operating reports promptly each and every month, in
3 chapter 11, regardless of whether it is operating. These monthly operating
4 reports must comply with the United States Trustee Guidelines. The December
5 report is overdue, so that needs to be filed at some point. There's also
6 quarterly fees that are due for each and every quarter that the debtor
7 remains in chapter 11. Do you understand these requirements that I've just
8 read? I'm happy to explain them more.

9 Michael Conway: He understands it.

10 Richard Pell: We understand it. Working on the first monthly operating
11 report right now.

12 Ben Higgins: Okay. So the United States Trustee has completed questions of
13 the debtor at this time. Are there any creditors of the debtor who have
14 questions at this time? And could you please identify yourself and who you
15 represent for the record?

16 John Jureller: Certainly. It's John Jureller from Klestadt Winters, and I
17 represent Richard Kaiser. And I just have a few questions regarding, excuse
18 me, the debtor's filings, including Mr. Pell's declaration, the schedules,
19 the statement of financial affairs. Mr. Pell, in your declaration at
20 paragraph 14 you indicate that the debtor intends to, quote, ultimately
21 emerge from bankruptcy as the financing arm for other solar companies, which
22 will have responsibility for the sales, installation, and maintenance aspects
23 of the business. Could you please update us on those plans?

24 Richard Pell: Yeah, I think that was correct as of the time of the filing.
25 As I mentioned earlier, this is a very fluid situation with respect to the

1 U.S. tax code and recently some things have happened in the industry. Trump
2 put a 30% tax on imported solar panels. We think actually the industry will
3 survive that. But more challenging is the reduction in the overall corporate
4 tax rate, so there was a whole industry out there supplying tax equity to
5 finance alternative energy, not just solar but wind

6 [01:25:00]

7 projects as well. The problem is, with the drop in the tax rate from 35% to I
8 think it's 21%, there's an overabundance of need from solar companies but a
9 sudden huge shrinkage in the supply, so key players in the industry, U.S.
10 Bank Corp's a huge player, Goldman Sachs, J.P. Morgan, but they also have
11 other ways of generating investment tax credits. A big one is low and middle
12 income housing projects. So that takes up a lot of their capacity, and then
13 the overage that existed at 35% was available for projects like solar and
14 wind. That suddenly disappeared. So it seems to us quite possible that
15 players like USB, Goldman, J.P. Morgan and other players will exit the
16 business entirely, which means the whole viability of a company that plans to
17 leverage our financing capability to develop complicated structures and so
18 forth, if we can't get tax equity, that kind of goes out the window.

19 John Jureller: So you've been in bankruptcy for two months now. Do you have
20 anything in place with respect to emerging as a new company?

21 William Frey: No.

22 John Jureller: Okay. Has there been any financing secured or negotiated
23 with respect to a potential new company, reorganized company?

24 William Frey: No. We'll deal with that when we get past the crap your
25 client left behind.

1 Richard Pell: Yeah, this is my first bankruptcy, so it's a learning
2 experience.

3 John Jureller: Have you identified any management with respect to a possible
4 new company, any interviews or any discussions with anybody who would be
5 involved?

6 Richard Pell: Nothing formal. As we brainstorm occasionally about this as a
7 possibility, people come to mind, but we haven't had formal discussions with
8 anybody.

9 John Jureller: Have you set any time period as to when you're going to make
10 a decision as to how the company's going to reorganize?

11 William Frey: No, and, even if we do it, we don't necessarily have to do it
12 under the Level umbrella. We can set up another seed corp and do it out of
13 that.

14 John Jureller: Okay, well, I'm asking about the debtor and what the debtor's
15 planning to do, and I'm quoting what you state in your declaration, so that's
16 understood.

17 Richard Pell: Yeah, it's a fluid situation. I mean, your choice I guess in
18 bankruptcy is, what, chapter 11 or chapter 7, and, while we still have plans
19 and hopes and I think we still do to emerge as an entity, 11 seems the more
20 appropriate format rather than going to a liquidation process under chapter
21 7.

22 John Jureller: Excuse me, on your scheduled assets, which is docket number
23 35, as we talked about, you identify certain causes of action against, quote,
24 Richard Kaiser, former employees and other third parties. You've identified
25 the potential claims against the formal employees. You also identified as to

1 the third party in that quote as being U.S. Bank. What is the claim that you
2 have against U.S. Bank?

3 William Frey: It burned 1,000 arrays to the ground by not funding them, not
4 selling them, taking over as managing member and ignoring those assets.

5 John Jureller: Do you have any demands against U.S. Bank related to those
6 claims?

7 William Frey: No, not yet.

8 John Jureller: Just let me finish, just because we're on the tape recorder.
9 With respect to Mr. Kaiser, what's the basis of any potential causes of
10 action against him as identified in the assets, the scheduled assets?

11 William Frey: Theft, he's committed security fraud. He's stolen money. He
12 wired money to himself from the company. He misrepresented the financials
13 and took investors' money based on that. Gross mismanagement, that's the
14 least of the problems. But he's basically a sociopath and a pathological
15 liar.

16 John Jureller: Counsel, I don't know if that's necessary, but I'll let you
17 talk to your client.

18 William Frey: That's toned down.

19 John Jureller: What is the securities fraud that you allege?

20 William Frey: Well, if you tell someone X and it's Y and you take their
21 money, that's called securities fraud.

22 Richard Pell: It's a 10B5.

23 William Frey: It's a 10B5 violation. Also, if you omit material information
24 and take peoples' money, that's a 10B5 violation.

25 John Jureller: Have you taken any action yet with respect to these claims?

1 William Frey: No.

2 John Jureller: You indicated that he wired funds to LLCs that he controlled.

3 When did he wire these funds?

4 William Frey: Many times.

5 John Jureller: When?

6 William Frey: I don't have the schedule.

7 John Jureller: How did you identify the dates that he had wired those?

8 William Frey: Because we found the wires when we were doing the forensics,

9 when we were going through it. One of the problems is he didn't keep any

10 books and records. He

11 [01:30:00]

12 stopped keeping all books and records over a year ago.

13 John Jureller: And what were the LLCs that he reportedly wired funds to?

14 William Frey: One that we know about is Kaiser Analytics, which is an LLC

15 controlled by him. We also have wires directly to him and Scott, and there's

16 lots of other wires that we have not yet figured out.

17 John Jureller: And Scott is the controller that we couldn't pronounce his

18 name.

19 William Frey: He was in cahoots with Kaiser. I hope you have a criminal

20 defense.

21 Michael Conway: They do. Their firm actually is very good on the criminal

22 side.

23 William Frey: Good, you're going to be busy.

24 John Jureller: How did you calculate the alleged damage of 35 million?

25 William Frey: Of Kaiser?

1 John Jureller: You set forth in your schedules that the causative actions
2 have a value of not less than 35 million. I'm wondering how you calculated
3 35 million.

4 William Frey: I don't know. But, if you look at the value of what Kaiser
5 did, he destroyed—

6 John Jureller: Well, if you don't know, maybe Mr. Pell knows, since he's the
7 one who signed it.

8 Richard Pell: Sure. Which page are we on?

9 Ben Higgins: It would be in your schedule A/B, and it's page, at the bottom
10 of the page, page 9.

11 John Jureller: It says 9, but it's actually 8 of 46.

12 Richard Pell: Page 9, okay. This says against Richard Kaiser, former
13 employees, and other third parties, 35 million. That number's probably low,
14 but that would include Richard Kaiser, U.S. Bank Corp., Richard Kaiser's law
15 firm, the accountants to the company, which gave us an unqualified audit
16 opinion. So there are a variety of people we intend to pursue. Kaiser's
17 just one of them.

18 John Jureller: How do you calculate your claims against Mr. Kaiser? Do you
19 have a number?

20 William Frey: If it were completely up to me, I would take the value of
21 Level today versus the value of Level when you were raising capital, and the
22 number would be substantial in the triple digit numbers.

23 John Jureller: But you put in a number in the schedules, and I'm just asking
24 how you came up with that number. If we stick to my questions, then we can
25 get it done.

1 Richard Pell: Well, first, you have to understand that we're hiring a
2 forensic accountant, so we're dealing with a situation almost made of like
3 where new moneys, new suckers, new sources of capital had to be constantly
4 sought to plug a black hole of where the money went. We're still trying to
5 put that together.

6 John Jureller: So at this point you have not retained a forensic accountant.

7 Richard Pell: We've come up with some names. It's just a question of when's
8 the appropriate time to start the work. So what we have now is actually a
9 very able bookkeeper, Peg [PH 01:33:06] Finkle who was used by Kevin
10 Johnson's prior company, Seamless Technologies, which was sold to Avnet.

11 She's in there sorting through the records, as she finds them, bank
12 statements and so forth, as she's able to get her hands on them. So we're at
13 the very early stages of figuring out where exactly all the money went.

14 John Jureller: So the claims that you've asserted in your schedules were
15 found by this bookkeeper, [INDISCERNIBLE 01:33:34] the bookkeeper?

16 Richard Pell: Yeah, I mean, and if just off the top of your head you think
17 about numbers, I think roughly 30 million went in in terms of equity and debt
18 financing into this black hole based on fraudulent information compiled by
19 Mr. Kaiser.

20 Michael Conway: The majority of that number comes from the lost value of the
21 arrays.

22 Richard Pell: Yeah, I figure, I mean, it's—

23 John Jureller: Which is what was the claim against the U.S. Bank, correct?

24 William Frey: We have not made a claim against U.S. Bank yet.

1 Richard Pell: It's not a claim against U.S. Bank. There's no claim against
2 U.S. Bank. Mr. Frey has indicated previously that he's referring to somebody
3 else and using that term, because it's easier for him to use, but right now
4 that number doesn't include anything relating to U.S. Bank or First Star or
5 anybody else. It relates to the parties that are related to the burning down
6 or stealing of assets from the company, the breach of fiduciary duties by Mr.
7 Kaiser, the extent that there are other claims that are pursued which are not
8 included in that, I'm sure that we'll find them, and to the extent that there
9 are claims against First Star, they haven't been found yet, but, if they are
10 found, we will pursue them, but that number relates to the

11 [01:35:00]

12 employees taking assets from the company and taking them to their new
13 employers, Mr. Kaiser burning the equity to the ground by simply mismanaging
14 the company and committing various acts of fraudulent misrepresentation and
15 essentially hiding his acts in various ways from the owners of the company,
16 and \$35 million is essentially the value that was lost by those acts. It has
17 nothing to do with other possible claims that we might locate down the road,
18 and I'm sure we'll locate a lot of claims down the road. It could include
19 malpractice by accountants or attorneys or by other parties that are involved
20 in this business, but this is related to the assets, the value of the
21 business that was lost and the assets which were lost based on the actions of
22 Mr. Kaiser and the former employees and the parties they employed, the former
23 employees.

24 John Jureller: When you indicate the lost value of the arrays, could you
25 quantify that, how you come up with that?

1 Richard Pell: It's actually pretty complicated to figure out the value of an
2 array. There are a whole bunch of pieces that go into that, so they've got
3 arrays of all different size. You've got them in different locations. The
4 further south they are, the more sun that gets produced, the further north
5 they are the less sun that gets produced. Then by location of the asset,
6 there are different state and local incentives for green energy. You know,
7 earlier it was mentioned the SREC program in Massachusetts. They don't have
8 an SREC program in New York. Another factor is, okay, these things are 20
9 year power purchase agreements. So you think about it as an annuity, I've
10 been in a little bit of a bad mood this week, because I've noticed interest
11 rates are going up, and, when interest rates go up, the present value of
12 those annuity cash flows goes down. So it's kind of a moving target.

13 John Jureller: And how do you define, what's your definition of the lost
14 value of an array? I mean, how do you come up with that? When you say when
15 somebody lost the value of an array, what do you mean by that? Are you
16 talking about a contract that wasn't signed or a contract that was signed and
17 never completed or what—?

18 Richard Pell: There are different categories. I guess you're more familiar
19 with this, Bill, but in some cases a contract was signed and the stuff was
20 not installed. In a number of those cases, the salesman who made the sale
21 went over to a competitor. There's one in particular where a lot of them
22 went, and the sale was consummated, even though they had non-compete
23 provisions.

1 John Jureller: But as it relates to Mr. Kaiser, how would he be involved in
2 the lost value of an array? Because you're taking former employees that went
3 to other companies, not Mr. Kaiswer. How do you define that for Mr. Kaiser?

4 Richard Pell: It's not primarily lost value of the array that Kaiser was
5 responsible for.

6 John Jureller: No, that particular aspect of your alleged cause of action,
7 how does that relate to Mr. Kaiser?

8 Richard Pell: The lost value of the array typically the cause of action
9 would be against the employee who took the asset.

10 William Frey: Mr. Kaiser also took a lot of intellectual property from what
11 we believe he took.

12 Richard Pell: Well, we understand that he may have been accessing our
13 systems after he was terminated, but that's, again, for the forensic
14 accountants to put together, plus technology experts.

15 John Jureller: In the debtor's statement of financial affairs, which is
16 docket number 36, you list—and this is payments to insiders, a payment of
17 \$500,616.44 to Mr. Kaiser on January 6, 2017, identified as unknown, quote,
18 unquote, unknown. Are you aware that on December 22nd, 2016, three weeks
19 before this payment, Mr. Kaiser loaned the company \$500,000 to cover payroll?

20 Richard Pell: Yes.

21 John Jureller: Okay.

22 William Frey: We had the right to get that money back.

23 John Jureller: And, if you knew that that was a loan to cover payroll, why
24 did you identify it as unknown? Why didn't you identify it as a loan?

1 Richard Pell: Sorry, maybe that needs to be corrected. But, at that point,
2 when he lends the company \$500,000, there were other secured creditors,
3 including QED, Bill's financial vehicle, including my wife who had lent the
4 company \$3 million. Kaiser didn't consult us before he put the money in. We
5 would have periodic discussions about the cash flow needs of the company.
6 Typically it would look great, and then suddenly there'd be a desperate need
7 for

8 [01:40:00]

9 cash, and oh my god, we need this by next week. But we weren't consulted
10 before he put that money into the company, nor were we consulted before he
11 took it out, even though at that point he would have ranked pari-passu with
12 all the other unsecured—

13 John Jureller: Do you know whether Mr. Kaiser gave notice of the loan to and
14 received the approval of the board?

15 William Frey: I do not believe he did.

16 John Jureller: Do you know for certain whether he did or not?

17 William Frey: I would be 99.99% certain he did not, but I'm not on the
18 board.

19 John Jureller: And, if he did not put in the funds, is it then true that the
20 company would not have been able to make payroll for December in 2016?

21 William Frey: I don't know. That may have been a very good thing, by the
22 way.

23 Richard Pell: It would have prompted a discussion with his other board
24 member and the key shareholders, that's for sure.

1 John Jureller: In your declaration, Mr. Pell, you state under oath that, in
2 paragraph 11, that Mr. Kaiser, quote, used millions of dollars in new
3 investment funds to pay himself. Again, do you have certain dates when that
4 actually occurred, dates and amounts?

5 Richard Pell: A million dollars. Yeah, I was referring to a million dollar
6 purchase of stock directly from Richard, so I've got to get the date on that
7 transaction, but, as part of an equity raise, Richard made the argument,
8 look, I'm working for a few hundred thousand dollars a year or something, I
9 have no real serious money. I need a million bucks. So at that point we
10 were still very bullish on the prospects for the company based on the false
11 information in repeated presentations we got from Mr. Kaiser, so he took a
12 million dollars from my wife in exchange for securities, which he later
13 acknowledged were greatly inflated in value. And, when confronted by that,
14 he agreed that actually the valuation applied to the company was a lot lower,
15 and therefore he actually should have given up a bigger part of his equity
16 interest, and the transaction was adjusted in her favor.

17 John Jureller: So, just to be clear, this was a million dollars, this
18 statement that was in your declaration relates to this million dollar private
19 stock purchase, that's it.

20 Richard Pell: Correct.

21 Michael Conway: No, not necessarily. He's asking you for a qualifying
22 answer, something that's inappropriate at this point in time, but there are
23 other—you already raised the point yourself, counsel, that he took in 2017
24 \$500,000, he got that from a deposit that was made of \$2 million and new
25 money raised. Instead of using it for the company, he used it to pay

1 himself. There are other examples of this, so please don't turn this into a
2 deposition and a lawsuit. That's not why we're here.

3 John Jureller: And I'm not, and I'm asking Mr. Pell, and you can answer—

4 Michael Conway: I'm sitting here listening, and I'm counsel.

5 John Jureller: It was a simple question whether it was from a stock raise,
6 and he said that it was, and that's all that I'm asking.

7 Michael Conway: Yeah, and you know why we're here. This is a 341 meeting.
8 This is not a lawsuit.

9 John Jureller: Understood. And I'm asking questions that are set forth in
10 declarations under oath, and Mr. Pell has answered the way that he answered.
11 Again, Mr. Pell, in your declaration at paragraph 12, you state that Mr.
12 Kaiser obtained approximately 5 million of inventory funding without
13 informing the board of directors, correct?

14 Richard Pell: Yeah, that was his—

15 John Jureller: When did he do that?

16 Richard Pell: Dates, I think it was in 2016. That was his arrangement with
17 Coopers after LG had terminated our 90 day financing terms, I think probably
18 due to poor payment record on our part.

19 John Jureller: Who were the members of the board of directors at that time?

20 Richard Pell: It was a two person board. Richard Kaiser had two votes.
21 Carrie Frey had one vote.

22 William Frey: He thought he had two votes. The document you signed he had
23 two votes, the document I signed he had one vote, I never signed your
24 document, as far as I know. Mr. Kaiser had this problem of forging documents
25 as well. I hope you have a really good criminal defense.

1 John Jureller: I don't know whether, again, counsel, these statements are
2 completely unnecessary and inappropriate.

3 William Frey: He's going to get a lot more than that.

4 John Jureller: With respect to—isn't it true that on February 24th, 2018, Mr.
5 Kaiser actually e-mailed a 20-page board presentation to Mr. Pell, yourself,
6 Carrie Frey and Kevin Johnson and company corporate counsel that indicated
7 and showed the changes in inventory?

8 Richard Pell: In 2017?

9 John Jureller: 2017, yes.

10 Richard Pell: I don't have that in front of me. I can't recall. There have
11 been so many presentations over the years.

12 John Jureller: Do you recall receiving a 20-page presentation in February
13 2017?

14 [01:45:00]

15 Richard Pell: I can't identify that one specifically, because I've received
16 many 20, 30, 40 page presentations from Richard Kaiser, which are all being
17 dissected as we speak.

18 John Jureller: And you don't recall whether that presentation had—or the
19 presentations you received at that time period had changes in inventory in
20 the terms?

21 Richard Pell: Changes in inventory? I mean, I actually—at the time the deal
22 with Coopers was announced, I heard about it. At that point I thought it was
23 pretty clever actually, because we were a cash-constrained company. We had
24 some sources of debt financing, chiefly the New York Green Bank. The removal
25 of credit terms from our leading supplier of solar panels was a problem. My

1 initial reaction was Kaiser did a pretty good job of negotiating that deal,
2 but—

3 William Frey: What was represented to me was that Coopers was willing to
4 give 90 days when others were giving 60 or giving 120, when others were
5 giving 90. The reality was that it was—much of this debt was the better part
6 of a year.

7 John Jureller: But do you have any recollection, and obviously the
8 presentations will show, that these inventory terms were actually in the
9 presentations to the board?

10 Richard Pell: I'd have to look at the document. It's not in front of me.

11 John Jureller: But, as we said, you don't know either way.

12 Richard Pell: It's quite possible. I mean, he certainly did disclose it at
13 some point. I think it was post-agreement rather than pre-agreement.

14 John Jureller: Okay. Do you know when the agreement was?

15 Richard Pell: No. I mean, we heard about it as a fair accompli. It wasn't
16 something that was discussed with the board.

17 John Jureller: Do you know whether it was in the board presentations from
18 March, April, and May of 2017?

19 Richard Pell: I'd have to have the documents in front of me with the dates.

20 John Jureller: Who would have received the board presentations?

21 Richard Pell: Typically it was a pretty small group. The key shareholder
22 Bill owns the majority of the company. His wife co-owns it with him. I own
23 somewhere between 15 and 20% of the company. I would typically get one.
24 Kevin Johnson later became more involved with the business and took a decent
25 amount of the stock. I forget how much. Then occasionally we would have a

1 consultant present. We were advised a lot by a gentleman, [PH 01:47:27]

2 Brian Bernhart, who's pretty knowledgeable about the solar industry, and we
3 used him as a consultant. And then often Scott would be present, because he
4 would prepare a lot of the spread sheets at Richard's direction.

5 John Jureller: So, when you state that the board of directors were not
6 informed, that's actually not correct, correct?

7 Richard Pell: Your question was we were not--

8 John Jureller: I'm not asking you.

9 Richard Pell: Were not informed before the transaction with Coopers was
10 negotiated. So we might have been informed as a fait accompli. I think we
11 were informed after the fact.

12 William Frey: And we certainly did not understand the magnitude of it and
13 the fact that it was effectively debt financing.

14 Richard Pell: We thought it was a clever way of reducing our working capital
15 needs by negotiating a good inventory management system.

16 John Jureller: Sorry. Mr. Kaiser's counsel has written letters to the
17 debtor's counsel and filed these letters with the court referencing
18 documentary evidence in the debtor's possession that statements in your
19 declaration are actually not accurate, including, with respect to the
20 worker's comp insurance, the inventory and the alleged alteration of the
21 corporate governance documents. Have you been able to locate, excuse me, any
22 e-mails or other documents referenced in these letters?

23 Richard Pell: Defer to counsel on what sort of paper trail do we have on the
24 alteration of the investor rights agreement?

1 Michael Conway: I haven't looked at that in a while, but there's certainly a
2 paper trail, but it's not relevant to this process today.

3 John Jureller: Have you looked at any of the claims that were in the letter
4 or done any investigation on that? And, Mr. Pell, I'm asking you, because
5 it's your declaration.

6 Richard Pell: Yeah, but it's your letter. So the letter came after the
7 declaration.

8 John Jureller: Understood, but the letter--so the declaration--

9 Richard Pell: I'm not sure what this has to do with a bankruptcy proceeding.

10 John Jureller: Well, because you're filing documents in support of the
11 bankruptcy filing, and we've provided information in the letter which shows
12 that some of that information is not accurate, and I'm asking whether you
13 looked into it after you received our letter.

14 Michael Conway: That would be confidential information. You're asking him
15 whether he's had conversations with his counsel about these things. You sent
16 a letter

17 [01:50:00]

18 to counsel. And you want him to now tell you what counsel has done to look
19 into that?

20 John Jureller: I'm just asking whether he looked into it or not.

21 Richard Pell: Well, honestly it's going to be a process of seeking payment
22 for the creditors of Level Solar Inc. I would include us in that, but also
23 other people perhaps in the room. There are various avenues we're going to
24 pursue. One of them is Mr. Kaiser, actually every asset he has, and for us
25

1 to lay forth our strategy, how we're going to recover assets and drive him
2 into bankruptcy just doesn't seem timely.

3 John Jureller: So, again, my question is have you done any investigation
4 with respect to the allegations in the letter? It's just a yes or no.

5 Michael Conway: His counsel certainly has and determined everything in the
6 letter was false.

7 John Jureller: Okay. I have nothing further. I'm going to reserve all
8 rights on behalf of Mr. Kaiser with respect to a rule 2004 exam if we deem
9 appropriate.

10 Ben Higgins: Thank you, Mr. Jureller. Would anyone else like to ask some
11 questions over there? Could you please identify yourself and the party that
12 you represent for the record?

13 Arthur Rosenberg: Of course, thank you, yes. My name is Arthur Rosenberg.
14 I'm with Holland & Knight. We are counsel for the New York Green Bank, which
15 has been mentioned several times during this meeting. We just had a few
16 questions to follow up, primarily on the schedules and to a smaller extent on
17 the statement of financial affairs. I can certainly talk about sections of
18 the schedules. But the first thing I just wanted to talk about is 3.1, item
19 3.1, which are the bank accounts. I guess now, based on what you told us,
20 there's really only one remaining bank account, which is the checking account
21 or the operating account number 42 70. Could you tell us what the background
22 was, the background documents to come up with the \$714,000 number? Do you
23 guys see the statement from Citibank?

24 Richard Pell: That's the number that was on the online summary of the
25 account at the time this was done.

1 Arthur Rosenberg: And do you have any bank statements going back at least
2 through the bankruptcy filing and before?

3 Richard Pell: We do now. We're in the process of trying to get them. But,
4 as I mentioned to you in the past, we'll certainly get you copies of all of
5 the—

6 Arthur Rosenberg: That was my follow up question, could you get us copies
7 just so that we have a little more transparency on those bank accounts?

8 Okay, good. When you filed, when debtor filed the cash management motion,
9 remember there was a schedule attached that listed several other bank
10 accounts, 12 of them or some number like that, right, if you recall that?

11 Obviously two of those accounts are listed under schedules. Did you locate
12 any assets in any of these other accounts?

13 Richard Pell: Any amounts that were in any accounts were transferred to the
14 operating account.

15 Arthur Rosenberg: I see, they all were converged into the operating account.
16 Do you have statements for any of these other accounts?

17 Richard Pell: As far as I know, we either have or are getting statements for
18 all accounts that like I said are now closed, but we'll have statements
19 through the closing, and it'll show what moneys went where.

20 Arthur Rosenberg: Right. And do you know whether any customer payments, the
21 ACHs, as we call them, although I know there are some checks, do you know if
22 any of those payments went into the other accounts?

23 Richard Pell: We don't know the source of these payments yet.

1 Arthur Rosenberg: You don't know the source yet, okay. Do you know the
2 source of some of the payments into the 42 70? Are there some customer
3 payments in that account?

4 Richard Pell: We're not aware of what the source is of anything pre-petition
5 yet. There's been no--well, take that back. I think there may be a few
6 hundred dollars of post-petition customer payments in that account, and I
7 have requested copies of those checks, because we're trying to determine
8 whether those are the debtor's money or whether they belong to the funds.

9 Arthur Rosenberg: To the funds, okay. So you anticipate being able to get
10 bank statements from the pre-petition period.

11 Richard Pell: Correct.

12 Arthur Rosenberg: Okay. That's fine.

13 Richard Pell: And, with luck, we'll be at the customer level, be able to
14 figure out what went where, but it's a process.

15 Arthur Rosenberg: Timeline-wise you think a couple of weeks, a month?

16 Richard Pell: Maybe. We're hopeful. We're hopeful. It's been slow getting
17 information, but we're getting there. We feel like we're pretty close now.

18 Arthur Rosenberg: All right, thank you. Next, let's see, item 11B and 12,
19 which I guess is the 31 million, that's for the—I think that's listed as
20 receivables.

21 [01:55:00]

22 Did you say that that was ACH's debt or customer payments that are due or is
23 that the capitalized value? It was unclear to me what you guys answered.

24 Richard Pell: Yeah. That's a number that is in the—

25 Arthur Rosenberg: You know which one I'm talking about.

1 Richard Pell: I know the number. It's the number that comes from the
2 balance sheet of the company that is based upon the books as they've been
3 able to be reconciled to date, and it includes ACH transfers that are due and
4 residual amounts that are due, tax credits that are due. So that number
5 could include moneys that should be ultimately up streamed or down streamed,
6 however you want to put it.

7 Arthur Rosenberg: Right, but at the moment that's still--there's not enough
8 transparency there yet.

9 Richard Pell: Exactly.

10 Arthur Rosenberg: But you anticipate getting more transparency on that?

11 Richard Pell: We do.

12 Arthur Rosenberg: Okay, good. Secondly or thirdly, sorry, let's see, 15.1
13 and 15.2. Oh, the valuations of the two subsidiaries that you list, 15.1 and
14 15.2 on schedule A are the valuations of the two subsidiaries that you list.
15 Do you know how those work? Well, I guess the first one says it was book
16 value.

17 Richard Pell: That's what was invested by essentially two people sitting
18 here put that much money into it.

19 Arthur Rosenberg: I see, and not you.

20 Richard Pell: Not me.

21 Arthur Rosenberg: Okay, got it. So those were invested into Level Solar
22 Master Holdings, and then the estimate of the value of Level Solar fund two,
23 do you know how that was estimated?

24 Richard Pell: Yes.

25 William Frey: That's the Henry Howard one, right?

1 Richard Pell: Fund two is not—that's Level Solar.

2 William Frey: Two is Level Solar.

3 Richard Pell: That's based on the value of the assets in Level Solar at
4 \$5.00 a kilowatt, the tax credits that have already been taken multiplied by
5 the number of arrays.

6 Arthur Rosenberg: So that was done by, \$5.00 a watt, so that was done by
7 determining a cash flow based on—

8 Richard Pell: It's an estimate of fair market value.

9 Arthur Rosenberg: And that would be the value of arrays owned by that
10 entity, that fund. Okay, I see. And, right, the arrays are not based on
11 hardware. They're based really on cash flow or electrical flow I guess is
12 what Mr. Frey just said. That makes sense. Okay. Let me see. All right,
13 this one—skip this one. Item 77, let's look at item 77. Oh, you touched on
14 this a little bit. Item 77 part 11 of the schedules, I think that's all
15 schedule A is a \$9.8 million figure that's called capitalized solar arrays.
16 Do we know which arrays that was? I know it was not 100% clear from the
17 answer earlier.

18 Richard Pell: Bill, did you work on this?

19 William Frey: A lot of this information came from the audit, which we're not
20 sure we can put 100% faith in. This comes from the balance sheet that was
21 created by an auditing company.

22 Arthur Rosenberg: Right, because someone had asked if it was the 50 arrays
23 on the roof. I think the answer was that would be much more than what those
24 are worth. Is that the residual on the back end of all of the 2700 arrays?

25 Richard Pell: It could possibly be the residual, I don't know.

1 Arthur Rosenberg: But you guys—it was in the audit, but you're not 100%
2 certain.

3 William Frey: So we sell 20 year PPAs, and New York Green Bank has a claim
4 on it, and it's probably going to take, I don't know, 5, 6, 7, 8 years for
5 the Green Bank to get repaid, so that might be a figure that's putting a
6 valuation on the very back end.

7 Arthur Rosenberg: The residual is what I would call them. You guys call it
8 the back end, got it. Yeah, if you could follow up on that, I know this will
9 be continued, as Mr. Higgins said, and if we can just get an answer on it,
10 just to make sure all of our—

11 William Frey: That number smells about right.

12 Arthur Rosenberg: I mean, that's what I would think, but you guys know the
13 numbers certainly much better than I do, so, okay, fine. And let me see.

14 Oh, the consignment agreement that's referred to in item 2.1 of schedule D, I
15 guess that's with Cooper Friedman or something like that, right?

16 Richard Pell: Yeah, that's the people who were supplying our panels and
17 providing financing that we were discussing earlier.

18 Arthur Rosenberg: Now, are Cooper Friedman and Cooper Electric Supply
19 related companies? They are?

20 Richard Pell: Yes.

21 Arthur Rosenberg: Okay.

22 William Frey: The name is Cooper Friedman Electric Supply.

23 Arthur Rosenberg: It is, yeah, and I saw that, but Cooper Friedman is
24 located somewhere out in New Jersey. Cooper Electric was like Hicksville,
25

1 New York. I just wanted to make sure we're talking—that's probably two sides
2 of the same—

3 Richard Pell: They own a lot of companies.

4 Arthur Rosenberg: They own a lot of companies, and—

5 Richard Pell: Ultimately it's owned by a French parent.

6 [02:00:00]

7 Arthur Rosenberg: Oh, really?

8 William Frey: Yeah, it's a French private company.

9 Arthur Rosenberg: Is it Cooper or Friedman? I withdraw that question. It
10 doesn't sound French. Cooper, do you anticipate any liability as a result of
11 the consignment arrangement?

12 Richard Pell: He owns \$45 million.

13 Arthur Rosenberg: That's the other side of the arrangement though, right?
14 There's really two sides. There's consignment and then—or are they all one
15 and the same?

16 William Frey: It's all wrapped up in one and the same. Consignment was of
17 those panels that they claimed the \$4.5 million.

18 Richard Pell: We've been making the best efforts to get them their panels
19 and equipment back.

20 Arthur Rosenberg: It wasn't clear to me that they were the same transaction,
21 but it sounds like they were.

22 William Frey: They have a security interest in the panels, the panels, or
23 what they claimed, the \$4.5 million.

24 Arthur Rosenberg: Got it, okay. Now I understand that. Let's see, this one
25 was answered already. Oh, you mentioned—one of you mentioned, I'm sorry,

1 that at one point the homeowner agreements were assigned. I forget which one
2 of you guys said that. When you said the homeowner agreements were assigned,
3 generally did you mean they were assigned to the funds or was there another
4 third party?

5 Richard Pell: Funds.

6 Arthur Rosenberg: To the funds, okay, that's what I thought, but that wasn't
7 clear. And then, let me see, item 21 of the statement of financial affairs,
8 so let's jump over to the statement of financial affairs, which is docket
9 number 36, and item 21 I believe that says the question is list any property
10 that the debtor holds or controls for another entity. Now, when that was
11 determined, did you consider the possibility that there was some money within
12 the bank accounts that may belong to the funds?

13 Richard Pell: Obviously not, because I think it says none.

14 Arthur Rosenberg: Yeah, it says none, but you anticipate it's a possibility
15 that some of the money in the checking accounts, without asking for an
16 admission, that some of the money in the checking account may belong to third
17 parties, most likely the funds?

18 William Frey: Based on our conversations with you or my conversations with
19 you, that's what you've told us, so we intend to fully investigate.

20 Arthur Rosenberg: So you're going to investigate that possibility, and, if
21 that's not correct, you may amend the schedules or the statement accordingly
22 maybe.

23 William Frey: Right.

24 Arthur Rosenberg: Okay. Let's see. I don't think I had any other
25 questions. A bunch of them have been answered already either by your answers

1 to Mr. Higgins or to Mr. Kaiser's counsel. So I think I'm all done. Thank
2 you very much, gentlemen.

3 Ben Higgins: Thank you, Mr. Rosenberg. Anybody else? Okay. I did have one
4 follow up question for you, then we can get out of here. You mentioned that
5 there was a lot of effort going into the structure of the financing and
6 that's actually almost the expertise of the debtor at this point is actually
7 setting up this arrangement, and you described some of the subsidiary
8 entities as bankruptcy remote entities. So I mean this structure was
9 intentionally set up to minimize the risk of the actual cash flow from the
10 debtor's creditors, is that correct?

11 William Frey: That's correct.

12 Ben Higgins: Okay. That's my only question. There's a few issues that are
13 outstanding, the DIP account is one, and there are a couple potential
14 amendments. So what we'll do is we will continue this to a further date.
15 How much time do you think you need to get some of that stuff worked out?

16 William Frey: DIP account should be done in a few days. You know, with the
17 financial information that we may or may not modify and the schedules, we're
18 on the verge of having all of the data finally delivered to us and organized
19 by the book. Once she has organized all the data and we have all the data,
20 that's when we're going to hand it to a forensic accountant who will then
21 dive deeper and find out what if anything we missed and got wrong or just
22 didn't see. At that point, I assume the questions like Mr. Rosenberg's which
23 are a little more of a deep dive question, you know, is there any money, for
24 instance, in the operating account that was being held for the benefit of
25 somebody else, those are the questions that you really need to have a real

1 deep dive into this stuff to figure out. With respect to the other questions
2 that we said, you know, might result in changes, we're talking about
3 valuations. You know, those estimates or valuations change as we get more
4 data. I'm not sure that we're going to give you definitive

5 [02:05:00]

6 answers to the value of the assets in this case, because they're not
7 tangible. So we may be revising that throughout the case.

8 Ben Higgins: Right, and that's not necessarily something that you need a
9 definitive answer for the purposes of the 341 meeting, but it seems like
10 there's enough open questions right now where it makes sense to kick this out
11 a little bit till you have some more information and then we can decide if we
12 need to come back here.

13 William Frey: I would say if we kick it out to the middle of March and then
14 decide whether or not we need more time, I can tell you this. Right now I'm
15 in trial, and I'll be in trial till the end of February, and the trial's in
16 Maryland, so I'm not easily accessible, but mid-March I'll be back in the
17 saddle.

18 Richard Pell: It's tricky, because, you know, we have an interest in having
19 enough time to do a thorough job putting the information together. The flip
20 side of it is we're big creditors of the company, so we're also impatient,
21 because we wouldn't mind doing our best job to get our money back.

22 William Frey: It's also, just from an opportunity cost point of view in
23 life, this is all negative energy. It's just a pain in the ass, a learning
24 experience, but a pain in the ass.

1 Ben Higgins: Yeah, well, maybe we could remove some of the negative energy
2 by not keeping it too far out. Mid-March you suggest, is March 9th soon or
3 far enough out? Or how does that work? Fridays are generally the day that I
4 know we have availability here, so that's why I'm picking it. If it's better
5 for the parties, we can do earlier in the day. We don't have to do the
6 afternoon.

7 Richard Pell: We'd be able to tell you, but they took our phones.

8 Ben Higgins: Sorry about that.

9 William Frey: March 9th is actually a bad day, but the 16th is a good day.

10 Ben Higgins: Okay, March 16th.

11 Richard Pell: 16th is better for me, actually. March 9th I might be in Los
12 Angeles, but March 16th I should be here.

13 Ben Higgins: Okay. Well, is the afternoon or the morning preferable?

14 Richard Pell: Afternoons always for me. But I'll be flexible based on other
15 peoples—

16 Ben Higgins: We'll do March 16th at 2:30 P.M. again. I don't anticipate
17 having to have another meeting after that, so hopefully as much information
18 as you can have based on you know what's come up and what's not been
19 answered. I'll also try to put a list together of anything that the U.S.
20 Trustee needs by that point, and I'm sure we'll be in contact about other
21 issues in the case as well. I saw you have a sale motion scheduled for later
22 in February. So I believe the meeting is not closed, but we're done for the
23 day. Thank you.